



**CITY OF SCOTTSDALE**  
**PROFESSIONAL SERVICES CONTRACT**

**CONTRACT NO. 202#-###-COS**

**CONTRACT TITLE**

This Professional Services Contract ("Contract") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 ("Effective Date"), between the City of Scottsdale, an Arizona municipal corporation ("City"), and **CONSULTANT NAME, a/an [STATE] [ENTITY TYPE]** ("Consultant"). For purposes of this Contract, the City and Consultant may be referred to individually as a "Party" and collectively as the "Parties".

**RECITALS**

- A.** The Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services.
- B.** The City desires to contract for **BRIEF DESCRIPTION OF PROFESSIONAL SERVICES.**
- C.** Consultant is duly qualified to perform the requested professional services.

**AGREEMENT**

**FOR AND IN CONSIDERATION** of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. INCORPORATION OF RECITALS.** The Recitals set forth above are incorporated into and made a part of this Contract.
- 2. SERVICES, ACCEPTANCE, DOCUMENTATION.**

**2.1 Services.** The entire solicitation No. NUMBER, identified as **DESCRIPTION**, ("Solicitation") is incorporated by this reference as if set out fully herein. Consultant's proposal submitted in response to the Solicitation dated **DATE** ("Proposal") is incorporated by this reference as if set out fully herein. If any provision of the Proposal conflicts with, or is in any way inconsistent with, any provision of the Solicitation, this Solicitation will control. If any provision of the Proposal, including but not limited to any limitation of liability or disclaimer of warranty language, conflicts with, or is in any way inconsistent with, any provision of this Contract, this Contract will control.

**OR**

The Consultant is assigned the tasks specified in the attached **Exhibit A**, Consultant's Scope of Services dated \_\_\_\_\_, which is incorporated by reference and made a part of this Contract. If any provision of the Consultant's proposal, including but not limited to any limitation of liability or disclaimer of warranty language, conflicts or is in any way inconsistent with any provision of this Contract, this Contract will control.

The Consultant must obtain all necessary information to complete the tasks specified in **Exhibit A**.

The Consultant shall act under the authority and approval of the Contract Administrator to provide the services required by this Contract.

**2.2 Acceptance.** Each task will be reviewed and approved by the Contract Administrator to determine acceptable completion. The City will provide all necessary information to Consultant for timely completion of tasks.

**2.3 Documentation.** All documents, including but not limited to data compilations, studies, and reports which are prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to Consultant.

**2.4 Billing Records; Audit.** The time spent for each task must be recorded and submitted to the Contract Administrator. Consultant must maintain all books, papers, documents, accounting records, and other evidence pertaining to time billed and costs incurred and make these materials available for audit by the City in accordance with Section 12.4, Record and Audit Rights.

### **3. PAYMENTS.**

#### **3.1 Fee Schedule.**

The amount paid to Consultant inclusive of all expenses under this Contract will not exceed \$\_\_\_\_\_.

Consultant will be paid according to the following schedule.

Consultant may submit work in process billings for services rendered together with applicable documentation as directed by the Contract Administrator.

**OR**

Consultant will be paid according to the Pricing Proposal forms submitted in Consultant's proposal dated \_\_\_\_\_, attached as **Exhibit A** for reference.

**OR**

Consultant will be paid at the hourly rate of \$\_\_\_\_\_.

#### **Options**

Consultant will submit to the Contract Administrator for approval any out-of-pocket travel or other incidental expenses to be billed to the City.

OR

Approved expenses will not exceed \$\_\_\_\_\_.

OR

Amounts indicated in this section represent the entire amounts payable under this Contract. Additional expenses will not be authorized.

**3.2 Payment Approval.** All charges must be approved by the Contract Administrator before payment.

**3.3 Payment Terms.** Payment is due no later than twenty-five (25) days after the Contract Administrator's approval of any invoice. In no event will the City issue payment prior to receipt of an original, approved form of invoice containing accurate invoice and reference numbers. The City will not be liable for any delays in payment caused by Consultant's failure to timely submit invoices. Consultant shall send an electronic copy of all invoices to the Contract Administrator for approval. Upon approval, all invoices shall be sent to the City at the following address:

City of Scottsdale  
Accounts Payable  
7447 E. Indian School Road, Suite 210  
Scottsdale, Arizona 85251-4468

4. **TERM AND RENEWAL.** The initial term of this Contract shall be for a period of **XXXX** year/s, commencing on the Effective Date. The Parties may extend this Contract for up to **XXXX** additional term/s of **XXXX** year/s each, subject to the same terms and conditions outlined herein, without returning to City Council. Any such extensions shall be in the form of an amendment to this Contract and signed by the Purchasing Director or designee and the Consultant's authorized representative
5. **CONTRACT ADMINISTRATOR.** The "Contract Administrator" for the City is **Contract Administrator Name**. The Contract Administrator will serve as Consultant's primary point of contact with the City, monitor Consultant's performance, review and approve invoices, establish delivery schedules, and in conjunction with Purchasing ensure Certificates of Insurance are current, conform to the requirements of this Contract, and are in the City's possession. Consultant will direct any reports and/or special requests to the Contract Administrator.
6. **NOTICES.** All notices, requests, demands, consents, approvals, and other communications which may be or are required to be served or given under this Contract, shall be in writing and hand delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the Party or Parties, as follows:

If to City:

City of Scottsdale  
Attn: **Department Name**  
**Department Address**  
**Department Address**

Copy to: City of Scottsdale  
Attn: City Attorney  
3939 N. Drinkwater Blvd.  
Scottsdale, AZ 85251

If to Consultant: Consultant Name  
Attn: Contact Name  
Consultant Address  
Consultant Address

## 7. CONSULTANT'S PERFORMANCE.

**7.1 Evaluation of Consultant's Performance.** The Consultant will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to the following factors:

Completeness  
Accuracy  
Utility Coordination  
Technical Expertise  
Organization  
Appearance of Plans (linework, lettering, etc.)  
Working Relationship with City Staff and Others  
Availability  
Communication Skills (meetings, correspondence, etc.)

This evaluation will be prepared by City staff and used to evaluate the desirability to contract with the Consultant for services in the future.

**7.2 Completeness and Accuracy.** The Consultant will be responsible for the completeness and accuracy of its work, including but not limited to survey work, reports, supporting data, drawings, and sketches prepared by the Consultant. The Consultant will correct, at its expense, any errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Consultant. Additional construction added to the project will not be the responsibility of the Consultant unless the need for additional construction was created by an error, omission, or negligent act of the Consultant. The City's acceptance of the Consultant's work will not relieve the Consultant of any of its responsibilities.

**7.3 Subcontractors.** During the performance of the Contract, the Consultant may engage any additional Subcontractors as may be required for the timely completion of this Contract. The addition of any Subcontractors requires that the Consultant first obtain the approval of the City.

**7.3.1** In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Consultant.

**7.3.2** The Consultant will pay its Subcontractors within seven (7) calendar days of receipt of each progress payment from the City. The Consultant will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if

any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Consultant will pay Subcontractors the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to the Consultant. No Contract between the Consultant and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

**7.3.3** If the Consultant fails to make payments in accordance with these provisions, the City may take any of one or more of the following actions and the Consultant agrees that the City may take these actions:

- (A) Hold the Consultant in default under this Contract;
- (B) Withhold future payments including retention until proper payment has been made to Subcontractors in accordance with these provisions;
- (C) Reject all future offers to perform work for the City from the Consultant for a period not to exceed 1 year from the completion date of this project; or
- (D) Terminate this Contract.

## **8. TERMINATION.**

**8.1 Termination for Convenience.** City reserves the right to terminate this Contract or any part of this Contract for its sole convenience with 30 days' written notice. In the event of any termination, Consultant must immediately stop all work, and must immediately cause any of its suppliers and Subcontractors to cease all work. As compensation in full for services performed to the date of any termination, Consultant will receive a fee for the percentage of services actually completed. This fee will be in the amount to be mutually agreed upon by Consultant and the City, based on the agreed Scope of Work. If there is no mutual agreement, the Contract Administrator will determine the percentage of completion of each task detailed in the Scope of Work and Consultant's compensation will be based upon this determination. The City will make this final payment within 60 days after Consultant has delivered the last of the partially completed items. Consultant will not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Consultant's suppliers or Subcontractors, which Consultant could reasonably have avoided.

**8.2 Cancellation for Cause.** City may also cancel this Contract or any part of this Contract with seven (7) days' notice for cause in the event of any default by Consultant, or if Consultant fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance as judged by the Contract Administrator or failure to provide City, upon request, with adequate assurances of future performance are all causes allowing City to cancel this contract for cause. In the event of cancellation for cause, City will not be liable to Consultant for any amount, and Consultant will be liable to City for any and all damages sustained by reason of the default which gave rise to the cancellation.

In the event Consultant is in violation of any federal, state, county or city law, regulation or ordinance, the City may terminate this contract immediately upon giving notice to Consultant.

If the City improperly cancels the Contract for cause, the cancellation for cause will be converted to a termination for convenience.

**8.3 Funds Appropriation.** If the Scottsdale City Council does not appropriate funds to continue this Contract and pay for charges under this Contract, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice of termination to Consultant at least 30 days prior to the end of its current fiscal period and will pay to Consultant all approved charges incurred through the end of this period.

## **9. INSURANCE.**

**9.1 General.** Consultant agrees to comply with all applicable City ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of Consultant, Consultant must purchase and maintain, at its own expense, this Contract's stipulated minimum insurance with insurance companies properly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to the City. Failure to maintain insurance as specified may result in termination of this Contract at the City's option.

**9.2 Certificates of Insurance.** A current Acord Certificate is acceptable. Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate, delay in Contract execution, and/or termination of Contract. Additionally, Certificates of Insurance submitted without referencing a Contract number may be subject to rejection and returned or discarded.

**9.3 No Representation of Coverage Adequacy.** By requiring the insurance stated in this Contract, the City does not represent that coverage and limits will be adequate to protect Consultant. The City reserves the right to review any and all of the insurance policies and/or endorsements required by in this Contract but has no obligation to do so. Failure to demand any evidence of full compliance with the insurance requirements stated in this Contract or failure to identify any insurance deficiency does not relieve Consultant from, nor may it be construed or considered a waiver of, Consultant's obligation to maintain the required insurance at all times during the performance of this Contract.

**9.4 Coverage Term.** All insurance required by this Contract must be maintained in full force and effect until all work or services required to be performed under the terms of this Contract are satisfactorily performed, completed, and formally accepted by the City, unless otherwise specified in this Contract.

**9.5 Claims Made.** In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option, or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.

**9.6 Policy Deductibles and/or Self-Insured Retentions.** The policies stated in these requirements may provide coverage which contains deductibles or self-insured retention amounts. Any deductibles or self-insured retention are not applicable to the policy limits provided to the City. Consultant is solely responsible for any deductible or self-insured retention amount. The City, at its option, may require Consultant to secure payment of any deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

**9.7 Use of Sub-Contractors.** If any work under this Contract is subcontracted in any way, Consultant must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements stated in this Contract protecting the City and Consultant. Consultant will be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

**9.8 Evidence of Insurance and Requirement Endorsements.** Before beginning any work or services under this Contract, Consultant must furnish the City with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that any coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage, but any acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the required policies of insurance expire during the life of this Contract, it will be Consultant's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates will specifically cite the following provisions endorsed to the Consultant's policy:

**9.8.1** The City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named as Additional Insured under the following policies:

- a. Commercial General Liability
- b. Auto Liability
- c. Excess Liability - Follow Form to underlying insurance as required.

**9.8.2** Consultant's insurance must be primary insurance as respects performance of subject contract.

**9.8.3** All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, directors, officials, and employees for any claims arising out of work or services performed by Consultant under this Contract.

**9.8.4** If Consultant receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Consultant's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

**9.9 Commercial General Liability.** Consultant must maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, and advertising injury. If any excess insurance is utilized to fulfill the requirements of this paragraph, the excess insurance must be “follow form” equal or broader in coverage scope than the underlying insurance.

**9.10 Professional Liability.** If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims.

**9.11 Auto Liability.** If any vehicle is used in the performance of the Scope of Work that is the subject of this contract, the Consultant must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each accident on the Consultant’s owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant’s work or services under this Contract. If any excess insurance is utilized to fulfill the requirements of this paragraph, the excess insurance must be “follow form” equal or broader in coverage scope than the underlying insurance.

**9.12 Workers’ Compensation Insurance.** Consultant must maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes applicable to Consultant’s employees engaged in the performance of work or services under this Contract, and must also maintain Employers’ Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit. If Consultant is a sole proprietor or a single member limited liability company with no employees, and has elected not to purchase Workers’ Compensation Insurance, a completed and signed Workers’ Compensation Waiver Form will substitute for this insurance requirement.

## **10. INDEMNIFICATION.**

To the fullest extent permitted by law, Consultant, its successors, assigns, and guarantors must defend, indemnify, and hold harmless the City, its agents, representatives, officers, directors, officials, and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expenses, related to, arising from or out of, or resulting from, any act or omission, negligence, recklessness, or intentional wrongful conduct by Consultant in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant’s and Subcontractor’s employees. This indemnity obligation does not apply to, and Consultant shall be held harmless from and against all suits, demands, or claims related to, the sole negligence of the City, its agents, representatives, officers, directors, officials, and employees.



Insurance provisions in this Contract are separate and independent from the indemnity provisions of this section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

## **11. COMPLIANCE WITH ARIZONA AND FEDERAL LAWS.**

**11.1 Conflict of Interest.** The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a contractor to any other party to the contract with respect to the contract's subject matter. The cancellation will be effective when all other parties to the contract receive the City's written notice unless the notice specifies a later time (Arizona Revised Statute § 38-511).

**11.2 Immigration Law Compliance.** Under the provisions of Arizona Revised Statute §41-4401, Consultant warrants to the City that Consultant and all its subcontractors will comply with all federal immigration laws and regulations that relate to their employees and that Consultant and all its subcontractors now comply with the E-Verify Program under Arizona Revised Statute §23-214(A).

A breach of this warranty by Consultant or any of its subcontractors will be considered a material breach of this Contract and may subject Consultant or Subcontractor to penalties up to and including termination of this Contract or any subcontract. Consultant will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. Consultant's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

The City retains the legal right to inspect the papers of any employee of Consultant or any subcontractor who works on this Contract to ensure that Consultant or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of Consultant and any of its subcontractors to ensure compliance with this warranty. Consultant agrees to indemnify, defend, and hold the City harmless for, from, and against all losses and liabilities arising from any and all violations of these statutes.

**11.3 No Preferential Treatment or Discrimination.** In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to, or discriminate against, any individual or group on the basis of race, sex, color, ethnicity, or national origin.

**11.4 Israel Boycott Prohibition.** To the extent applicable under Arizona Revised Statute §35-393, Consultant certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel.

**11.5 Forced Labor Prohibition.** To the extent applicable under Arizona Revised Statute §35-394, Consultant warrants and certifies that it does not currently, and agrees for the duration of the Contract that it will not, use:

- a. The forced labor of ethnic Uyghurs in the People's Republic of China.
- b. Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- c. Any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If Consultant becomes aware during the term of the Contract that Consultant is not in compliance with this paragraph, Consultant shall notify the City within five (5) business days after becoming aware of the noncompliance. If Consultant fails to provide a written certification that Consultant has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance, this Contract shall terminate unless the Term of this Contract shall end prior to said one hundred eighty (180) day period.

**11.6 Federal Laws.** Consultant agrees to comply with all applicable federal laws, including but not limited to the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989.

**11.7 Americans with Disabilities Act.** Consultant acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and that any violation of this prohibition on the part of Consultant, its employees, agents or assigns will constitute a material breach of this Contract.

## **12. COMPLIANCE WITH CITY REQUIREMENTS.**

**12.1 Advertising.** No advertising or publicity concerning the City using Consultant's services shall be undertaken without prior written approval of such advertising or publicity by the Contract Administrator and the City Attorney.

**12.2 No Donations Allowed.** To avoid the appearance of impropriety, Consultant shall not make any donation to the City of any goods or services during the term of this Contract, unless it has specifically been approved by the City Manager or designee.

**12.3 Request for Taxpayer I.D. Number and Certification I.R.S. W-9 Form.** Upon request, Consultant will provide the required I.R.S. 2-9 Form, which is available from the I.R.S. website at [www.IRS.gov](http://www.IRS.gov) under their forms section.

**12.4 Records and Audit Rights.** Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this Contract are open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of the cost of the work, and any invoices, change orders, payments or claims submitted by Consultant or any of his payees in

accordance with the terms of the Contract. The City's authorized representative must be given access, at reasonable times and places, to all of Consultant's records and personnel in accordance with the provisions of this article throughout the term of this Contract and for a period of 3 years after last or final payment.

Consultant must require all Subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Section by insertion of these contract requirements in a written contract agreement between Consultant and payee. These requirements will also apply to any and all Subcontractors.

If an audit in accordance with this Section, discloses overcharges, of any nature, by the Consultant to the City in excess of 1% of the total contract billings, the actual cost of the City's audit will be reimbursed to the City by the Consultant. Any adjustments and/or payments which must be made as a result of any audit or inspection of the Consultant's invoices and/or records will be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Consultant.

**12.5 Background Check.** Consultant acknowledges that the City may require a background and/or criminal records check of Consultant, which may include fingerprinting. If, in the City's sole discretion, the City determines that Consultant refused to participate in a background or criminal records check, or the City no longer wishes to contract with Consultant due to the results of a background or criminal records check, the City may terminate this Contract effective immediately upon the City's notice to Consultant.

**12.6 On Site Safety Requirements.** For any non-construction City supplier whose service contract(s) (either singular or in aggregate) results in the contractor working 500 or more hours on site at a City of Scottsdale location(s) in any one calendar quarter, the following documentation must be provided by the contractor to the Contract Administrator ("CA"):

- the contractor's most recent OSHA 300A (if applicable);
- all accident reports for injuries that occurred in the city under the contract during the most recent review period;
- the contractor's current worker's compensation experience modifier;
- the above information is to be provided to the CA initially and every February thereafter as long as the contract is in force;
- the Contract Administrator will provide this information to Risk Management when requested.

### **13. MISCELLANEOUS.**

**13.1 Arizona Law; Venue.** This Contract shall be governed and interpreted according to the laws of the State of Arizona, and any cause of action pertaining to this Contract may be brought only in courts in Maricopa County, Arizona.

**13.2 Attorney Fees.** In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting

without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not the action is prosecuted to judgment.

**13.3 Severability.** If any provision of this Contract is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, then such provision shall be deemed deleted, the remaining provisions shall not in any way be affected or impaired thereby, and this Contract shall remain in full force and effect.

**13.4 Entire Agreement.** This Contract constitutes the entire understanding between the Parties and supersedes all previous representations, written or oral, with respect to the subject matter contained herein.

**13.5 Amendments.** Except as otherwise provided herein, this Contract may not be modified or amended except by written agreement of the Parties. The foregoing notwithstanding:

**13.5.1 Changes in the Work.** The City may at any time, as the need arises, order changes to the scope of the work without otherwise modifying, amending, or invalidating this Contract. If any such changes increase or decrease the amount due under this Contract or the time required for performance of the work, an equitable adjustment will be authorized by a written Change Order. The City will execute a formal Change Order based on detailed written quotations from the Consultant for work-related changes or time of completion variance. All Change Orders must be approved by both the City's Contract Administrator and Purchasing Director or designee. All Change Orders are subject to, and must comply with, the City's Procurement Code (Division 4, Article IV, Chapter 2 of the Scottsdale Revised Code) and all adopted rules and established procedures of the City's Purchasing Department. The Consultant will not perform any services not specifically described in this Contract and/or the Solicitation without a written Change Order. If the Consultant performs any such services without a Change Order, the Consultant will not receive any additional compensation.

**13.6 Ownership of Project Documents.** All documents, including but not limited to notes, records, data compilations, studies, and reports in any format, including but not limited to written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Consultant. When the work detail covers only the preparation of preliminary reports or documents, there will be no limitations on the City concerning use of the ideas or recommendations in the reports or documents. The City will release the Consultant from any liability for the preparation and use of preliminary reports or documents.

**13.7 Cooperative Use of Contract.** This Contract may be extended for use by other municipalities, government agencies and governing bodies, including but not limited to the Arizona Board of Regents, and political subdivisions of the State of Arizona, that has, at the time of request, a cooperative purchasing agreement with the City, or that participates in the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Any usage by other entities must be in accordance with the ordinances, charter, and/or rules and regulations of the respective entity and must be approved by Contractor. Each participating entity that orders goods or services under this Contract as provided above is solely responsible for

paying Contractor for those goods and services. The City is not responsible for any disputes arising out of transactions made by other entities.

**13.8 Assignment.** Services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the Purchasing Director or designee and Contract Administrator.

**13.9 Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

**13.10 Authority.** Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized to enter into this Contract.

**13.11 Successors and Assigns.** This Contract extends to and is binding upon Consultant, its successors and assigns, including any individual, company, partnership or other entity with or into which Consultant merges, consolidates or is liquidated, or any person, corporation, partnership or other entity to which Contractor sells its assets.

**13.12 Independent Contractor.** The services Consultant provides under the terms of this Contract to the City are that of an Independent Consultant, not an employee, or agent of the City. The City may report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099. City will not withhold income tax as a deduction from contractual payments unless required under federal or state law. As a result of this, Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

**13.13 Force Majeure.** Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts include, but not limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

**13.14 Taxes.** The fee listed in this Contract includes all taxes applicable to the services authorized. The City will have no obligation to pay additional amounts for taxes of any type.

**13.15 No Third Party Beneficiaries.** Nothing in this Contract will be construed to give any rights or benefits to any party other than the City and the Consultant. All duties and responsibilities undertaken in accordance with the Contract will be for the sole and exclusive benefit of the City and the Consultant and not for the benefit of any other party.

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