



## CONTRACT FOR PROFESSIONAL SERVICES

2024-PSA-036

## SAMPLE PROFESSIONAL SERVICES CONTRACT

City of Sierra Vista  
1011 North Coronado Drive  
Sierra Vista, AZ 85635

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## 1. Overview

### 1.1. City of Sierra Vista, Arizona

Contract for Professional Services  
CONTRACT # 2024-PSA-036

Sample Professional Services Contract

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Sierra Vista, 1011 North Coronado Drive, Sierra Vista, Arizona 85635, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated as City, and TBD, 123 Address Lane, Sierra Vista, AZ 85635 hereinafter designated as Consultant.

The services under this agreement are stipulated in City of Sierra Vista Request for Proposals #2024-PSA-036 which is attached to this agreement by reference, and the services and prices offered as described in the response dated November 15, 2023 that is attached to this agreement.

## 2. Special Terms and Conditions

### 2.1. DEFINITION OF KEY WORDS USED IN THE CONTRACT.

CITY: The City of Sierra Vista, Arizona, 1011 North Coronado Drive, Sierra Vista, Arizona 85635.

CONSULTANT: The individual, partnership, or corporation awarded this Contract by the City of Sierra Vista.

CONTRACT: The legal agreement executed between the City of Sierra Vista, Arizona, and the Consultant, specifically City of Sierra Vista Contract No.2024-PSA-036, Sample Professional Services Contract

MAY: Indicates something that is not mandatory but permissible.

SHALL, MUST: Indicates a mandatory requirement.

SHOULD: Indicates something that is recommended but not mandatory

WILL: Indicates an expression of intent, but is not binding.

### 2.2. TERMINATION OF CONTRACT.

- A. This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice to the Consultant. The City at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.
- B. The City reserves the right to cancel the whole or any part of this Contract due to failure of Consultant to carry out any term, promise, or condition of the Contract. The City will issue a written ten (10) day notice of default to Consultant for acting or failing to act in any of the following:
  - 1. In the opinion of the City, Consultant provides personnel that do not meet the requirements of the Contract;
  - 2. In the opinion of the City, Consultant fails to adequately perform the stipulations, conditions, or services/specifications required in the Contract;
  - 3. In the opinion of the City, Consultant attempts to impose on the City, personnel, or materials, products, or workmanship which is of an unacceptable quality;
  - 4. Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;
  - 5. In the opinion of the City, Consultant fails to make progress in the performance of the requirements of the Contract and/or gives the City a positive indication that Consultant will not or cannot perform to the requirements of the Contract.
- C. Each payment obligation of the City created hereby is conditioned upon the availability of City, State, and Federal Funds which are appropriated or allocated for the payment of such an

obligation. If funds are not allocated by the City and available for the continuance of services herein contemplated, the Contract period for the service may be terminated by the City at the end of the period for which funds are available. The City shall notify Consultant at the earliest possible time which service will or may be affected by a shortage of funds. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

### 2.3. RECORDS.

Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies.

### 2.4. ARBITRATION.

It is understood and agreed that no provision of the Contract relating to arbitration or requiring arbitration shall apply to or be binding upon the City except by the City's express written consent given subsequent to the execution of the Contract. However, at the City's sole option, or by other means expressly approved by the City, disputes may be resolved through arbitration, the dispute shall be resolved as provided for in A.R.S. §12-1501 et. seq. Contractor shall continue to render the services required by this Contract without interruption, notwithstanding the provisions of this section.

### 2.5. INDEPENDENT CONTRACTOR.

- A. It is understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be an employee or agent of the other party for any purpose whatsoever.
- B. Consultant understands that it is not entitled to compensation in the form of salaries, or to paid vacation or sick days by the City, and that such days do not accumulate for the use of same at a later date.
- C. Consultant understands that the City of Sierra Vista will not provide any insurance coverage to the Consultant including workmen's compensation coverage.

### 2.6. EQUAL OPPORTUNITY.

The Consultant shall at all times abide by the equal opportunity provisions of the Civil Rights Act of 1964 as amended, Executive Order 11375, and as supplemented in Department of Labor Regulations 41 CFR Part 60, and of the rules, regulations, and relevant orders of the Secretary of Labor.

### 2.7. CONTRACT TERM.

The term of this Contract shall be \_\_\_\_\_ months, unless terminated, canceled, or extended as otherwise provided herein. Any offer of extension years shall be my mutual agreement of both parties. It shall be the Consultant's responsibility to notify the Chief Procurement Officer within ninety (90) days of Contract expiration if Consultant desires to renew for a supplemental period.

## **2.8. PATENTS, COPYRIGHTS.**

All services, information, computer program elements, reports, and other deliverables which may have a potential patent or copyright value and which are created under this Contract shall be the property of the City of Sierra Vista and shall not be used by the Consultant or any other person except with the prior written permission of the Chief Procurement Officer.

## **2.9. KEY PERSONNEL.**

- A. It is essential that the Consultant provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Consultant must agree to assign specific individuals to the key positions
- B. The Consultant agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the City.
- C. If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Consultant shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

## **2.10. COMPENSATION AND METHOD OF PAYMENT.**

- A. In consideration of the performance of the services described in the Statement of Work, the City shall pay the Consultant the sum or amounts as set forth in the Consultant's Cost Proposal, dated November 15, 2023, herein referenced and made part of, and Consultant shall charge the City only in accordance with those same amounts.
- B. The City will pay the Consultant following the submission of itemized invoice(s) for the services rendered. No payment shall be issued prior to receipt of material or service and correct invoice.

## **2.11. COMMENCEMENT OF WORK.**

The Consultant shall work only after receiving the City's Notice to Proceed from an authorized City representative. The Consultant shall complete all work to the satisfaction of the City in accordance with the Statement of Work.

## **2.12. INSURANCE.**

- A. The Consultant agrees:
  - 1. To obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this Contract. All policies will contain an endorsement providing that written notice be given to the City at least ten (10) calendar days prior to termination, cancellation, or reduction in coverage on any policy.

2. The Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance policies shall include the City of Sierra Vista as an additional insured with respect to liability arising out of the performance of this Contract. The Consultant agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.
3. To provide and maintain minimum insurance limits as follows:
  - Coverage Afforded Limits of Liability
  - Worker's Compensation Statutory
  - Employer Liability \$1,000,000
  - Commercial General \$1,000,000 Bodily Injury and Property Damage
  - Liability Insurance Including: Combined Single Limit
    - (1) Premises and Operations
    - (2) Product and Completed Operations
    - (3) Blanket Contractual
    - (4) Broad Form Property Damage
    - (5) Personal Injury
  - Commercial Automobile \$1,000,000 Bodily Injury and Property Damage
  - Liability Insurance Including: Combined Single Limit
    - (1) Owned
    - (2) Non-Owned
    - (3) Leased
    - (4) Hired Vehicles
  - Professional Liability Insurance \$1,000,000 (minimum)
  - (Errors/Omissions) (Combined Single Limit)
  - (Professional Services Only)
- B. Consultant shall present to the City written evidence (Certification of Insurance) of compliance with all requirements as provided for above. Said evidence shall be to the City Chief Procurement Officer's satisfaction.

### **3. Standard Terms and Conditions**

#### **3.1. CERTIFICATION.**

By signature in the offer section of the Offer and Acceptance page Consultant certifies:

- A. The submission of the offer did not involve collusion or other anti-competitive practices.
- B. The Consultant has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response. Failure to provide a valid signature affirming the stipulations required by this clause shall result in the rejection of the offer. Signing the offer with a false statement shall void the offer and any resulting contract, and may be subject to legal remedies provided by law.
- C. The Consultant submitting the offer hereby certifies that the individual signing the proposal and/or Contract is an authorized agent for the Consultant and has the authority to bind the Consultant to the Contract.

#### **3.2. GRATUITIES.**

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

#### **3.3. APPLICABLE LAW.**

This Contract shall be governed by, and the City and Consultant shall have all remedies afforded each by the Uniform Commercial Code, as adopted by the State of Arizona, except as otherwise provided in this Contract or in laws pertaining specifically to the City. This Contract shall be governed by the law of the State of Arizona and suits pertaining to this Contract shall be brought only in Federal or State courts in the State of Arizona.

#### **3.4. LEGAL REMEDIES.**

All claims and controversies shall be subject to the Code of the City of Sierra Vista and Statutes of the State of Arizona.

#### **3.5. CONTRACT.**

The Contract shall be based upon the Request for Proposal issued by the City and the offer submitted by the Consultant in response to the request. The Contract shall substantially conform to the terms and conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Consultant. However, any substantial non-conformity in the response, as determined by the City's Chief



Procurement Officer, shall be deemed non-responsive and the offer shall be rejected. The Contract shall contain the entire agreement between the City of Sierra Vista and the Consultant relating to this requirement and shall prevail over any and all provisions agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

### **3.6. CONTRACT AMENDMENTS.**

This Contract shall be modified only by a written Contract Amendment signed by the Chief Procurement Officer and persons duly authorized to enter into contracts on behalf of the Consultant.

### **3.7. PROVISIONS REQUIRED BY LAW.**

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

### **3.8. SEVERABILITY.**

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

### **3.9. RELATIONSHIP OF PARTIES.**

It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. The Consultant is advised that taxes or Social Security payments shall not be withheld from a City payment issued hereunder and that Consultant should make arrangements to directly pay such expenses, if any.

### **3.10. INTERPRETATION - PAROL EVIDENCE.**

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

### **3.11. ASSIGNMENT - DELEGATION.**

No right or interest in this Contract shall be assigned by the Consultant without prior written permission of the City, and no delegation of any duty of Consultant shall be made without prior written permission of the City's Chief Procurement Officer. The City shall not unreasonably withhold approval and shall notify the Consultant of the City's position within 15 days of receipt of written request by the Consultant.

### 3.12. SUBCONTRACTS.

No subcontract shall be entered into by the Consultant with any other party to furnish any of the material/services specified herein without the advance written approval of the City's Chief Procurement Officer. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the Subcontractor were the Consultant referred to herein. The Consultant is responsible for Contract performance whether or not subcontractors are used. The City shall not unreasonably withhold approval and shall notify the Consultant of the City's position within 15 days of receipt of written request by the Consultant.

### 3.13. RIGHTS AND REMEDIES.

No provision in this document or in the Consultant's proposal shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services under the obligations imposed by this Contract or by law, shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

### 3.14. WARRANTIES.

Consultant warrants that all material or services delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or services specified and any inspection incidental thereto by the City, shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.

### 3.15. INDEMNIFICATION.

Consultant shall indemnify, defend, and hold harmless the City from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any reasonable attorney's fees and/or litigation expenses, which may be brought or made against any person, caused by, arising out of, or contributed to, in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of the Consultant, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incidental to the performance of this agreement, or arising out of Worker's Compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of the Consultant and/or its subcontractors or claims under similar such laws or obligations. The Consultant's obligation under this section shall not extend to any liability caused by the sole negligence of the City or its employees.

### 3.16. OVERCHARGES BY ANTITRUST VIOLATIONS.

The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Consultant hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.

### **3.17. FORCE MAJEURE.**

- A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence.
- B. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.
- C. If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as practicable, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract modification for a period of time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

### **3.18. RIGHT TO ASSURANCE.**

Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within ten (10) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

### **3.19. ADVERTISING.**

Consultant shall not advertise or publish information concerning this Contract, without prior written consent of the City.

### **3.20. RIGHT TO INSPECT.**

The City may, at reasonable times, and at the City's expense, inspect the place of business of a contractor or subcontractor which is related to the performance of any contract as awarded or to be awarded.

### **3.21. INSPECTION.**

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

### 3.22. EXCLUSIVE POSSESSION.

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

### 3.23. TITLE AND RISK OF LOSS.

The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

### 3.24. NO REPLACEMENT OF DEFECTIVE TENDER.

Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully conform, this shall constitute a breach and Consultant shall not have the right to substitute a conforming tender. Noncompliance shall conform to the cancellation clause set forth within this document.

### 3.25. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH.

Consultant shall deliver conforming materials in each installment or lot of this Contract and may not substitute non-conforming materials. Delivery of non-conforming materials or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole. Noncompliance shall conform to the cancellation clause set forth within this document.

### 3.26. LIENS.

All materials, services and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest held by the Consultant until payment in full is made by the City. Upon request of the City, the Consultant shall provide a formal release of all liens.

### 3.27. PAYMENT.

A separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice.

### 3.28. LICENSES.

Consultant shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the consultant as applicable to this Contract.

### 3.29. TERMINATION BY THE CHIEF PROCUREMENT OFFICER.

The City may cancel this Contract without penalty or further obligation pursuant to A.R.S §38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a consultant to any other party to this Contract with respect to the subject matter of the Contract. Such cancellation shall be effective when written notice from the Chief Procurement Officer is received by the parties to this Contract, unless the notice specifies a later time.

### **3.30. NON-DISCRIMINATION**

The Parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.

### **3.31. CONFLICT OF INTEREST**

This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.

### **3.32. NO BOYCOTT OF ISRAEL**

In accordance with ARS § 35-393.01, CONSULTANT certifies that the CONSULTANT is currently not engaged in, and for the duration of this Agreement agrees not to engage in, a boycott of Israel.

### **3.33. PUBLIC RECORDS LAW**

Notwithstanding any other provision of the Agreement, the Parties understand that the City of Sierra Vista is a public entity and, as such, is subject to Arizona's public records law, A.R.S. § 39-121 et. seq. All proposals submitted in response to this request shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification.

### **3.34. JURISDICTION AND APPLICABLE LAW**

This Agreement shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any action under this Agreement shall be in Cochise County, Arizona.

### 3.35. THIS AGREEMENT

This agreement constitutes the entire agreement between the CONSULTANT and CITY. Any changes or modifications shall be accomplished by amendment to this agreement executed by the duly authorized representatives of the parties.

IN WITNESS THEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives as attested and witnessed as of the day and year date first above written.

THIS CONTRACT AWARDED BY THE CHIEF PROCUREMENT OFFICER FOR THE CITY OF SIERRA VISTA ON THE NO VALUE.

**TBD:**

\_\_\_\_\_  
Authorized Signature

Title \_\_\_\_\_

Printed Name \_\_\_\_\_

Date \_\_\_\_\_

**CITY OF SIERRA VISTA:**

\_\_\_\_\_  
Kennie Downing

Chief Procurement Officer

**ATTEST:**

\_\_\_\_\_  
Jill Adams, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Nathan J. Williams, City Attorney

## 4. Price Sheet

### 4.1. Pricing Information

Contract 2024-PSA-036, Sample Professional Services Contract

Fee for professional \_\_\_\_\_ services are included in the: [ATTACHED COST PROPOSAL](#) DATED November 15, 2023: