

PHX DVT GYR

 **CITY OF PHOENIX AVIATION DEPARTMENT**

**Request for Qualifications (RFQ)
for
Real Estate Acquisition Services**

Schedule

ACTIVITY All times are local Phoenix time	DATE
Issue RFQ	May 26, 2010
Pre-Submittal Meeting at 11:00 a.m.	June 3, 2010
Submittal of Written Questions by 11:00 a.m.	June 10, 2010
Responses to Written Questions	June 16, 2010
Submittal of Affirmative Action Forms	See Section V (A)
Delivery of Submittals by 11:00 a.m.	June 23, 2010
Evaluation of Submittals	June 23-30, 2010
Short List and Interviews (if applicable)	July 19-23, 2010
Agreement Award Recommendation to Phoenix City Council	October 2010
Commencement of Agreement	December 1, 2010

Send submittals and requests for alternate formats to:

Gretchen Wolfe
City of Phoenix Aviation Department
Phoenix Sky Harbor International Airport – PHX
Terminal 3 - Level 3 East Mezzanine
3400 E. Sky Harbor Boulevard, Suite 3300
Phoenix, AZ 85034-4405
602-273-4082/602-273-8809 (fax)
800-781-1010 (TTY)
busopps.aviation@phoenix.gov
www.phoenix.gov/avirfp

This RFQ does not commit the City to award an agreement.

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I. INTRODUCTION

A. Introduction

The City of Phoenix is seeking real estate acquisition services for its Voluntary Acquisition and Relocation Services (VARs). VARs is a component of the Community Noise Reduction Program (CNRP), which is under the direction of the Aviation Department (Aviation).

In June 2002, the Phoenix City Council approved the implementation of CNRP to provide noise mitigation services. CNRP has 2 noise programs, the Residential Sound Mitigation Services and VARs. With the assistance of federal grants, VARs offers single-family homeowners and owners of vacant lots the opportunity to sell their properties to the City and be relocated outside any noise contours. The VARs area is generally bound by 44th Street to the east, 7th Street to the west, Washington Street to the north, and University Drive to the south and is depicted in **Attachment A**.

The scope of work is limited to certain residential areas adjacent to Phoenix Sky Harbor International Airport (PHX) where the noise decibel levels exceed 65 dB day/night average sound level, as identified in the Federal Aviation Regulation Part 150 Noise Compatibility Study (approved by the Federal Aviation Administration [FAA] in 2001).

Approximately 1,000 properties are eligible for VARs. As of December 31, 2009, VARs has acquired approximately 500 properties with another approximately 180 in progress. VARs is expected to sunset within the next 3 to 4 years.

B. Minimum Qualifications

Each submitter's proposed project manager must have 2 years' experience conducting residential real estate acquisitions regulated by the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA) requirements and implementing regulations on behalf of a government agency or federally funded project, and have a valid Arizona real estate license.

Any submitter that currently contracts with the City must be in good standing for its submittal to be considered responsive. For the purpose of this RFQ, good standing refers to compliance with all contractual provisions, including payment of financial obligations.

Each submitter must demonstrate in its submittal that it meets the minimum qualifications or the submittal will be rejected as non-responsive.

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C. Disadvantaged Business Enterprise (DBE) Participation

The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for City business.

This project will utilize federal funds provided by the Federal Aviation Administration (FAA) and is subject to the requirements of 49 Code of Federal Regulations (CFR) Part 26 and the U.S. Department of Transportation DBE Program. Submitters must meet the DBE Program requirements detailed in **Exhibit G of Attachment H**. The City encourages the utilization of eligible and qualified DBE firms in all phases of this scope of work. **To participate in this business opportunity as a recognized DBE, a DBE must be certified by the Arizona Unified Certification Program before the submittal deadline.**

The City has established a minimum DBE participation goal of **8.95%**. Submitters must show evidence of meeting or exceeding this required DBE participation goal by providing a completed **Proposed DBE Participation Form (Attachment G)** and **Subcontractor/Subconsultant/Supplier Contact/Bidder List (Attachment H)** in a separate sealed envelope along with the submittal.

Submittals not meeting the minimum DBE participation goal shall be rejected as non-responsive.

D. Agreement Term and Contractual Relationship

The agreement term will be 18 months, with 3 one-year renewal options, to be exercised at the sole discretion of the Aviation Director.

The information in this RFQ is not intended to completely define the proposed contractual relationship to be entered into by the City and the successful submitter. Submitters are advised to read carefully the draft agreement in **Attachment I**, to which the successful submitter shall be bound. These agreement terms may be amended at the sole discretion of the City at any time during the RFQ process and/or prior to execution.

E. Pre-Submittal Meeting

Submitters are strongly encouraged to attend the pre-submittal meeting at the date and time listed on page 1 in the PHX Terminal 3 Annex Building. Please email busopps.aviation@phoenix.gov to register for, and obtain directions to, this meeting.

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F. Submitter Questions and Notification

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

All questions about this RFQ must be submitted in writing no later than the deadline listed on page 1 to busopps.aviation@phoenix.gov. All written questions will be responded to in writing. Pre-submittal meeting attendees, and potential submitters who request such notification in writing, will be notified by e-mail when documents related to this RFQ are available at www.phoenix.gov/avirfp.

Submitters must also identify and notify the City of any exceptions with the draft agreement by the question deadline listed on page 1. Submittals that list exceptions to any mandatory provision or material requirement of this RFQ may be disqualified as non-responsive.

G. Addenda

The City shall not be responsible for any oral instructions given by any City employees or officials regarding RFQ instructions, specifications, or documents. Any changes will be in writing and available at www.phoenix.gov/avirfp.

H. Multiple Submittals Prohibited

Multiple submittals from any submitter shall be rejected. Submittals from corporate subsidiaries or holding companies, or from corporations who have a common president, chief executive officer, majority stockholder or management employee will be considered multiple submittals from a single submitter and subject all such multiple submittals to rejection or cancellation of any agreement award.

This prohibition does not apply to subcontractors.

I. Performance Guarantee

Upon execution of the agreement, the successful submitter shall be required to post and maintain with the City a performance bond or letter of credit, in a form acceptable to the City, in an amount equal to 3 months' services.

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II. SCOPE OF WORK

A. Overview of Services

The successful submitter shall acquire property rights on behalf of the City from residential property owners in the VARS area, in compliance with URA and all applicable laws and regulations. A full description of these services is provided in **Exhibit A of Attachment I**.

From time to time, the successful submitter may be required to acquire non-residential property rights and shall be required to assign an acquisition agent with business acquisition experience.

The City reserves the right to change the scope of work based on the needs of the City during the term of the agreement.

III. SUBMITTAL INSTRUCTIONS

A. Delivery of Submittals

Each submitter must submit the following in a sealed package marked with the submitter's name and the name of this RFQ:

- 1 original submittal,
- 7 hard copies of the submittal, and
- 1 copy of the submittal in Microsoft Word/Excel on a CD-Rom (PC-compatible)

Submittals must be delivered by the deadline listed on page 1 to the address listed on page 1. **Submittals received after the deadline date and time will be rejected as non-responsive.**

B. Form of Submittals

Submittals not following the specified format below or that are incomplete, conditional, obscure, or contain additions not requested, exceptions to material provisions, or irregularities of any kind, may be deemed non-responsive and disqualified from the process.

Pursuant to federal regulations and Advisory Circular 150/5100-14D, submittals, including all attachments, shall NOT contain any fees or pricing information. Submittals including fees or pricing information shall be deemed non-responsive and rejected. The City will negotiate a detailed scope of work and fees with the most qualified submitter.

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Submittals shall be limited to 20 double-sided pages, excluding required attachments and résumés, of letter-size paper with Arial font of at least 12 pt. The City prefers double-sided submittals.

1. Notarized Affidavit (Attachment B)

2. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (Attachment C)

3. Trade Restriction Clause Certification (Attachment D)

4. Restrictions on Federal Public Works Projects Certification (Attachment E)

5. Lobbying Restrictions Certification (Attachment F)

6. Qualifications & Experience Statement

- a) Each submitter shall provide sufficient documentation, including résumé, to demonstrate the proposed project manager meets the minimum qualifications listed in Section I (B) and is qualified to manage the scope of work described in this RFQ. Each submitter should also address each bullet point listed under **Item 1 of Section IV (A)**.
- b) Each submitter shall provide sufficient documentation, including résumés, to demonstrate it and its proposed acquisition agents are qualified to perform the scope of work described in this RFQ and address each bullet point listed under **Item 3 of Section IV (A)**.

7. Proposed Approach to Acquisition Services

In this section, each submitter shall provide a description of its approach to providing the acquisition services described in this RFQ. Submitters should address both residential real estate acquisitions and business real estate acquisitions.

8. Proposed Project Management Methodology

Each submitter shall describe its project management methodology for managing the scope of work, including its staffing plan.

The Staffing Plan should include:

- Methods for acquiring subcontractors through a competitive bid process in compliance with all federal, state and local requirements, if

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- needed;
- Number of staff, by job category, needed to perform scope of work;
- Organizational chart and description of responsibilities and tasks of staff and any proposed subcontractors;
- Percentage of work hours to be dedicated to this scope, per staffing position;
- Qualifications and experience requirements per staffing position; and
- Standards of conduct.

Submitters should also individually address each bullet point under **Item 4 of Section IV (A)**.

9. Exceptions

Each submitter shall include a list of exceptions to the requirements of the RFQ, if any, stated on a separate page labeled "Exceptions." The list shall identify the requirement, nature of the deviation, and explanation. If there are no deviations or exceptions to any portion of the RFQ, the submitter shall state so on a page entitled "Exceptions." If no deviations are identified and a submitter's submittal is accepted by the City, the submitter shall conform to all of the requirements specified therein.

It is the intent of the City to award an agreement on a fair, competitive basis. For this reason, the City may view the notation of any "exception" in response to any material conditions or requirement of the RFQ as an attempt by the submitter to vary the terms of the RFQ which, in fact, may result in giving such submitter an unfair advantage over other submitters.

Any submittal listing any exception to any mandatory provision or material requirement of this RFQ may be disqualified as non-responsive. Submitters should submit questions about mandatory or material requirements in accordance with the process described in **Section I (F)**.

10. Proposed DBE Participation & Subcontractor/Subconsultant/Supplier Contact/Bidder List (Attachments G & H)

Each submitter shall submit **Attachment G & Attachment H** in a separate sealed envelope marked "Proposed DBE Participation" in the same sealed package as the items listed above.

IV. SUBMITTAL EVALUATION

Submittals will be reviewed for documentation of minimum qualifications,

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completeness, and adherence to the RFQ requirements. The City reserves the sole right to determine the sufficiency of qualifications and experience of all submitters.

A. Evaluation Criteria

All eligible, responsive, and responsible submittals will be evaluated on the following:

- 1. Qualifications & Experience of Proposed Project Manager (0-30 points)**
 - Experience managing and providing residential real estate acquisition services
 - Experience managing and providing residential real estate acquisition services regulated by URA on behalf of a government agency or federally funded project
 - Experience on FAA projects and knowledge of FAA regulations, policies, and procedures
 - Experience with business real estate acquisition services
 - Qualifications for providing residential real estate acquisition services in Arizona
- 2. Proposed Approach to Real Estate Acquisition Services (0-25 points)**
 - Methodology for providing residential real estate acquisition services (0-20 points)
 - Methodology for providing business real estate acquisition services (0-5 points)
- 3. Qualifications & Experience of Submitter and Proposed Acquisition Agents (0-25 points)**
 - Demonstrated qualifications and ability to provide services within established timelines
 - Experience collaborating with government staff, sub-contractors, DBEs, community members, and other project stakeholders
 - Experience managing residential real estate acquisition projects
 - Experience managing and providing residential real estate acquisition services regulated by URA on behalf of a government agency or federally funded project
 - Experience with business real estate acquisition services
- 4. Proposed Project Management Methodology (0-20 points)**
 - Percentage of staffing resources allocated to providing direct services
 - Philosophy for providing services to meet the needs of the VARS community, including bilingual services
 - Plan for timely responding to VARS community members and staff

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- Proposed approach to project management of the entire scope of work
- Proposed staffing plan

B. Evaluation Panel

The Aviation Director will appoint an evaluation panel to review the submittals and recommend the most qualified submitter to be awarded the agreement resulting from this RFQ, subject to successful negotiations. The Aviation Director may accept this recommendation and forward it to the Phoenix Aviation Advisory Board and Phoenix City Council, or reject it.

The evaluation panel may interview the submitters or create a short list of submitters or may evaluate the submittals solely on the materials submitted by the submittal deadline. In the event a short list process is used, the evaluation panel will use the evaluation criteria established in this RFQ to identify the submitters most likely to be successful in the evaluation process. These submitters may then be scheduled for interviews with the evaluation panel.

V. GENERAL TERMS AND CONDITIONS OF THE SUBMITTAL

A. Affirmative Action Ordinance

Pursuant to Phoenix City Code, Chapter 18, Article V, Affirmative Action Requirements Forms must be completed accurately and be on file with the City's Equal Opportunity Department (EOD) prior to the submittal deadline. **Any submittal received from a submitter that has not filed the appropriate Affirmative Action Requirements Forms by the submittal deadline will be rejected.** Forms are available at www.phoenix.gov/avirfp.

B. Materials Submitted

All materials submitted in response to this RFQ become the property of the City. Each submitter, as an express condition for the City's consideration of such submittal, waives any right to access such submittals until 30 days after City Council awards the agreement. No submission or supporting documentation will be returned to submitters except rejected or non-responsive submittals. Submitters should note that the City is subject to the disclosure requirements of Arizona's public records law.

C. City's Reservation of Rights

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

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1. waiving any defects or informalities in any submittal or proposing procedure;
2. accepting or rejecting any or all submittals or any part of any or all submittals;
3. canceling the RFQ in part or in its entirety;
4. reissuing the RFQ with or without modification;
5. negotiating any or all submittal elements with entities of its choice or negotiating with any qualified sources; or
6. any other option deemed to be in the City's best interest.

D. City's Right to Disqualify for Conflict of Interest

The City reserves the right to disqualify any submitter on the basis of any real or apparent conflict of interest that is disclosed by the submittal submitted or any other data available to the City.

The successful submitter's employees may not be involved with any other Aviation-related business during the term of the agreement resulting from this RFQ as an employee, owner, partner, consultant, etc., which may perpetuate a real or apparent conflict of interest.

All determinations regarding potential conflicts of interest shall be made at the sole discretion of the Aviation Director, whose decision shall be final.

Any submitter submitting a submittal herein waives any right to object before any body or agency, including but not limited to, the Phoenix City Council, or any court, to the City's exercise of this right, now or at any future time.

E. Submitter Incurred Costs

The submitter shall be responsible for all costs incurred in preparing its submittal responding to this RFQ, including costs associated with interviews. The City shall not be responsible for any costs associated with this process.

F. Right to Investigate

In addition to the references and any information submitted with the submittal, the City may obtain information on past performance.

The City's determination as to whether the submitter is qualified and responsible will be based on the information furnished by the submitter, interviews (if applicable), and other sources determined to be valid by the City. Award will not be made until such investigations, that each submitter agrees to permit by

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submitting its submittal, are made by the City.

G. Submitter Certification and Affidavit

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

In compliance with A.R.S. §§ 1-501 and 1-502, the City shall require any successful submitter that submits its proposal as a sole proprietorship or as an individual to complete the Affidavit of Lawful Presence posted at www.phoenix.gov/avirfp, prior to the award of any agreement resulting from this process.

H. Appeals

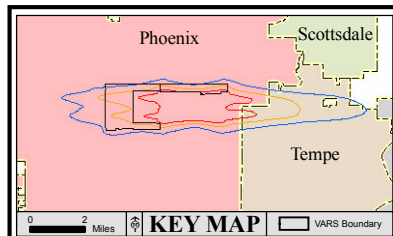
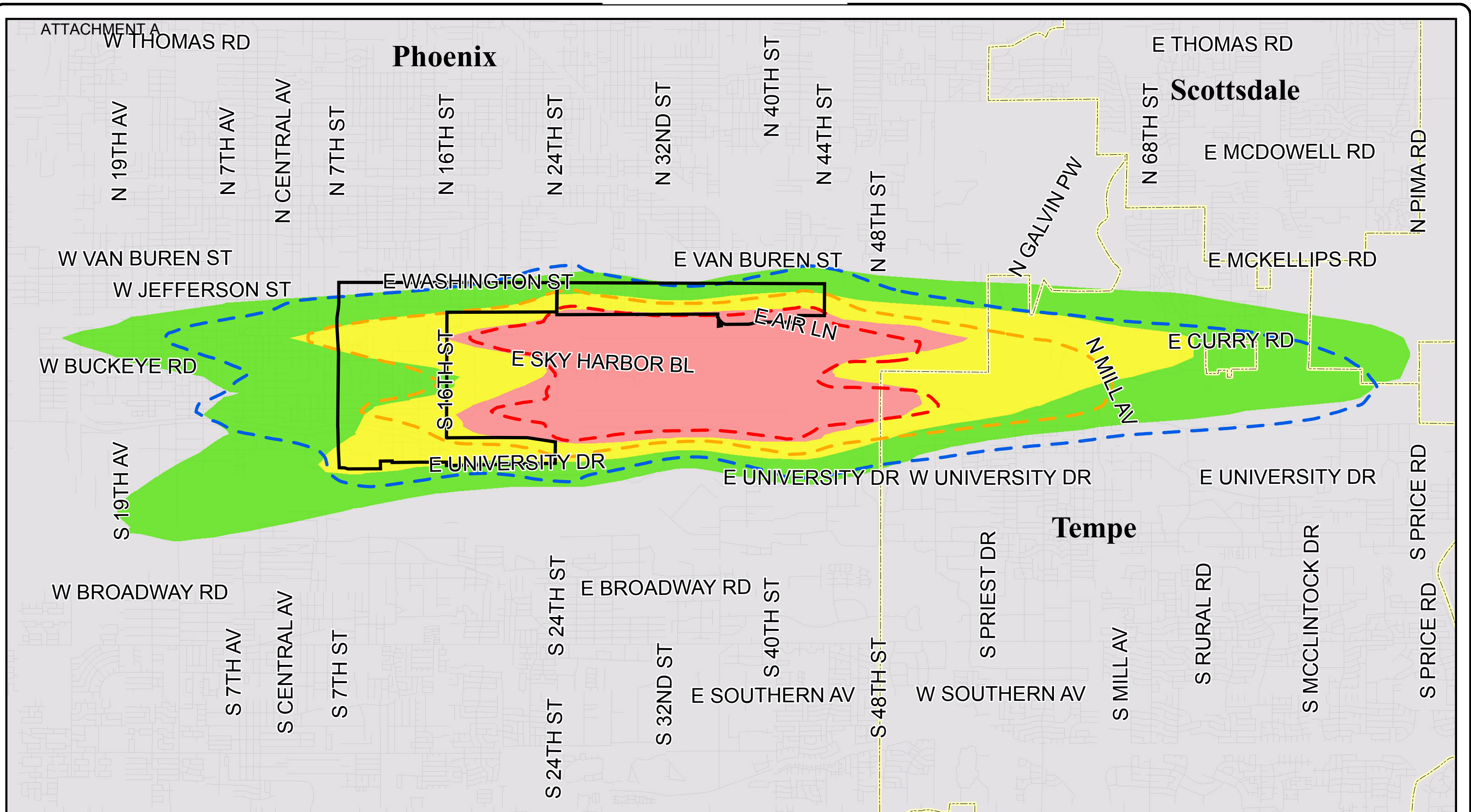
Protest of a disqualification from the RFQ process due to a submittal being deemed non-responsive must be submitted within 7 calendar days after the Notice of Disqualification has been delivered to the submitter. Protest of an award recommendation must be filed within 7 calendar days after an award recommendation is posted on the website.

Protests shall be in writing and filed with the Aviation Director and must include all of the following: 1) the name, address and telephone number of the protester; 2) the signature of the protester or its representative; 3) identification of the RFQ challenged; 4) a detailed statement of the legal and factual grounds of protest including copies of relevant documents; and, 5) the form of relief requested.

The Aviation Director, or his/her designee, may submit the information to anyone necessary to receive their comments and may choose to meet with submitter(s) at his/her discretion. The decision of the Aviation Director, or his/her designee, is final.

I. Execution of Agreement

Within 30 days of notice from the City that the agreement has been finalized, the successful submitter shall fully execute and deliver such agreement. Should the successful submitter fail to deliver the agreement within 30 days, the award may be canceled by the City. In the event the successful submitter defaults, or refuses or fails to timely execute the formal agreement or provide required documents, the City shall consider award to the next highest qualified submitter ready and willing to provide services, subject to successful negotiations.



1 inch equals 4,500 feet



- | | | |
|---------------|------------------------|------------------------|
| City Streets | 1999 65 dB DNL Contour | 1992 65 dB DNL Contour |
| City Boundary | 1999 70 dB DNL Contour | 1992 70 dB DNL Contour |
| VARS Boundary | 1999 75 dB DNL Contour | 1992 75 dB DNL Contour |

City of Phoenix Aviation Department
Community Noise Reduction Program

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ATTACHMENT B

Affidavit

Assurances

The undersigned submitter hereby submits to the City of Phoenix (City) the enclosed submittal based upon all terms and conditions set forth in the City's RFQ and referenced materials. Submitter further specifically agrees hereby to provide services in the manner set forth in its submittal.

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

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

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Legal Status

1. In the past 7 years, have you personally, or any business with which you have been involved, been declared bankrupt, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court? If "Yes," provide date, court jurisdiction, case name, case number, amount of liabilities, amount of assets and the status of each occurrence. Yes () No ()
2. Have you personally, or any business with which you have been involved, ever been a defaulter as surety upon any obligation to the City? If "Yes," provide details. Yes () No ()
3. Are there any pending liens, claims, or litigation in excess of \$1,000,000 involving submitter? If "Yes," provide detailed information regarding complaints about how the quality of submitter's services was unsatisfactory. Yes () No ()
4. Has the submitter been involved in any lawsuits in the past 5 years? If "Yes," provide list. Yes () No ()
5. Have any of the submitter's consulting contracts been terminated prior to their expiration terms, voluntarily or involuntarily, within the last 5 years? If "Yes," provide name, location, and date of the contract(s). Yes () No ()
6. Has the submitter, or any corporation or other entity that has, directly or indirectly, a controlling interest in the submitter, or any subsidiary of the submitter or other entity in which the submitter has a controlling interest or any of the submitter's principals, officers, or directors ever been barred from bidding on federal, state, or local government contracts? If "Yes," provide the current status of such suspension or debarment proceedings. Yes () No ()
7. Submitter intends to operate the business as a (check one):

Corporation ()	Partnership ()
Joint Venture ()	Sole Proprietorship ()
Limited Liability Company ()	

References

Submitter shall furnish the names and contact information for 3 clients for whom the submitter is furnishing or has furnished services similar to those described in this RFQ. Submitters should not list City of Phoenix employees or officials as references.

1. Company and Reference Name: _____
Address: _____
Telephone/Fax/E-Mail: _____
2. Company and Reference Name: _____
Address: _____

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Telephone/Fax/E-Mail: _____

3. Company and Reference Name: _____

Address: _____

Telephone/Fax/E-Mail: _____

Affirmative Action

Affirmative Action Compliance Expiration Date: _____

Signature(s)

Name of Submitter (Legal Name): _____

Printed Name of Authorized Person*: _____

Title: _____

Business Address of Submitter: _____

Telephone/Fax/E-Mail: _____

Signature of Authorized Person: _____

*Submittal must be signed by an individual authorized to contractually bind the submitter.

Name of Joint Venture and/or
Subconsultant Partner (if applicable): _____

Printed Name of Authorized Person: _____

Business Address: _____

Telephone/Fax/E-mail: _____

Signature of Authorized Person: _____

NOTARIZED

Signed and sworn before me this _____, day of _____, _____.

Notary Signature: _____

My Commission Expires: _____

Affix Seal

ATTACHMENT C

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions

A. Instructions for Certification

1. By signing and submitting this submittal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was executed. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this submittal is submitted if at any time the prospective lower tier participant learns its certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “submittal,” and “voluntarily excluded,” as used in this clause, have their meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. Submitters may contact the person to whom this submittal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this submittal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this submittal that it will include this clause title “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not proposed for debarment under 48 CFR, part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
 8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person proposed for debarment under 48 CFR, part 9, part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- B. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions
1. The prospective lower tier participant certifies, by submission of this submittal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
 2. Where the prospective lower tier participant is unable to certify to any other statement in this certification, such prospective participant shall attach an explanation to this submittal.

Submitting Firm Name _____

Authorized Signature _____

Typed Name _____

Typed Title _____

Date _____

ATTACHMENT D

Trade Restriction Clause Certification

The submitter or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this Clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a submitter or subcontractor unable to certify to the above. If the submitter knowingly procures or subcontracts for the supply of any product or service from a foreign country on said list for use on the project, the Federal Aviation Administration (FAA) may direct through the sponsor cancellation of the contract at no cost to the government.

Further, submitter agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The submitter may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The submitter shall provide immediate written notice to the sponsor if submitter learns its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the submitter if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the submitter or subcontractor knowingly rendered an erroneous certification, the FAA may direct through the sponsor cancellation of the contract or subcontract for default at no cost to the government.

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Nothing contained in the foregoing shall be construed to require establishment of a system of records to render, in good faith, the certification required by this provision. The knowledge and information of a submitter is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Submitting Firm

Authorized Representative/Print Name

Signature

Title

Date

790138

ATTACHMENT E

Restrictions on Federal Public Works Projects Certification

- (a) Definitions. The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7-30.9.
- (b) General. This clause implements the procurement provisions contained in the Continuing Resolution on the Fiscal Year 1988 Budget, Public Law No. 100-202, and the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law No. 100-223.
- (c) Restrictions. Submitter shall not knowingly enter into any subcontract under this agreement:
 - (1) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (USTR); or
 - (2) for the supply of any product for use on the federal public works project under this agreement produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.
- (d) Certification. Submitter may rely upon the certification of a prospective subcontractor that it is not a subcontractor of a foreign country included on the list of countries that discriminates against U.S. firms published by the U.S.T.R. and that products supplied by such subcontractor for use on the federal public works project under this agreement are not products of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR, unless submitter has knowledge that the certification is erroneous.
- (e) Erroneous certification. The certification in paragraph (d) of the provision entitled "Restriction on Federal Public Works Projects--Certification," is a material representation of fact upon which reliance was placed when making the award. If it is later determined submitter knowingly rendered an erroneous certification, in addition to other remedies available to the government, the contracting officer may cancel this agreement for default at no cost to the government.
- (f) Cancellation. Unless the restrictions of this clause are waived as provided in paragraph (d) of the provision entitled "Restriction on Federal Public Works Projects--Certification," if submitter knowingly enters into a subcontract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or that supplies any

product for use on the federal public works project under this agreement from a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR, the contracting officer may cancel this agreement for default, at no cost to the government.

- (g) Subcontracts. Submitter shall incorporate this clause, without modification, including this paragraph (g) in all solicitations and subcontracts under this agreement:

Certification Regarding Restrictions on Federal Public Works Projects--Subcontractors

- (1) Offeror, by submission of an offer and execution of an agreement, certifies that offeror is:
- (i) not a consultant owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
 - (ii) not supplying any product for use on the federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the USTR.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

- (2) The offeror shall provide immediate written notice to submitter if, at any time, the offeror learns its certification was erroneous by reason of changed circumstances.
- (3) Offeror shall not knowingly enter into any subcontract under this Contract:
- (i) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
 - (ii) for the supply of any product for use on the federal public works project under this agreement that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR. Submitter may rely upon the certification in paragraph (g)(1) of this clause unless it

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has knowledge that the certification is erroneous.

- (4) Unless the restrictions of this clause have been waived under the contract for the federal public works project, if submitter knowingly enters into a subcontract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or that supplies any product for use on the federal public works project under this agreement that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR, the government contracting officer may direct, through higher-tier submitters, cancellation of this agreement at no cost to the government.
- (5) Definitions. The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7-30.9.
- (6) The certification in paragraph (g)(1) of this clause is a material representation of fact upon which reliance was placed when making the award. If it is later determined that offerer knowingly rendered an erroneous certification, in addition to other remedies available to the government, the contracting officer may direct, through higher-tier submitters, cancellation of this subcontract at no cost to the government.
- (7) Offerer agrees to insert this clause, without modification, including this paragraph, in all solicitations and subcontracts under this agreement.

Submitting Firm Name _____

Authorized Signature _____

Typed Name _____

Typed Title _____

Date _____

ATTACHMENT F

Lobbying Restrictions Certification

Submitter certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of Submitter, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement Submitter shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. Submitter shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Submitting Firm

Authorized Representative/Print Name

Title

Signature

Date

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ATTACHMENT G

PROPOSED DBE PARTICIPATION (TO BE COMPLETED BY THE SUBMITTER – DUE AT TIME OF SUBMITTAL)

NOTE: No dollar amount should be recorded on this form. Proposed participation should be noted as a percentage **ONLY**. Providing a dollar amount shall result in the proposal being deemed non-responsive.

NAME OF SUBMITTER _____ PROJECT DESCRIPTION _____

DBE FIRM NAME (if known)	PRINCIPAL CONTACT (if not known, enter "N/A")	ADDRESS/PHONE (if not known, enter "N/A")	SCOPE OF WORK DBE WILL PERFORM (if not known, enter "N/A")	TOTAL PARTICIPATION PERCENTAGE (if not known, enter "N/A")
				%
				%
				%
				%
				%
				%
				%
Enter Total Percentage of Proposed DBE Utilization in the box to the right. Sum percentages from individual scope areas OR enter TOTAL general proposed percentage utilization. For submittal to be considered responsive, TOTAL percentage must be equal to or greater than the DBE goal identified in Section I (C) of the RFQ, OR the submittal must be accompanied by a waiver request.				TOTAL %

NOTE: PLEASE REVIEW SECTION III (D) OF THE SPECIFICATIONS TO ENSURE THE PARTICIPATION LISTED ON THE FORM HAS BEEN COUNTED CONSISTENT WITH DBE PROGRAM REQUIREMENTS.

Statement of Commitment:

This will certify that, of the total scope of services (based on the solicitation documents), _____ % **(Enter Total Proposed DBE Participation from above)** will be accomplished by duly certified Disadvantaged Business Enterprises.

THE UNDERSIGNED HEREIN AFFIRMS THAT THE SUBMITTER WILL ENTER INTO A FORMAL AGREEMENT WITH THE DBE FIRMS LISTED HEREIN CONDITIONED UPON THE EXECUTION OF A CONTRACT WITH THE CITY OF PHOENIX.

Signed By _____ Title _____ Date _____

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ATTACHMENT H

SUBCONSULTANT/SUBCONTRACTOR/SUPPLIER CONTACT LIST

(TO BE COMPLETED BY THE SUBMITTER – DUE AT TIME OF SUBMITTAL)

COMPANY NAME	COMPANY ADDRESS	SCOPE OF WORK SOLICITED	INCLUDED IN PROPOSED DBE %? (YES OR NO)	FIRM CERTIFICATION STATUS (IF KNOWN)
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED

NOTE: If additional space is required, please copy and submit multiple pages of this Attachment.

Submitter: _____

Signature: _____

Completed by: _____

Date: _____

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ATTACHMENT I

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF PHOENIX
AND**

AGREEMENT NO. _____

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 _____ (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 solicited qualifications for Real Estate Acquisition Services for the City's Community Noise Reduction Program (CNRP) Voluntary Acquisition and Relocation Services (VARs).
4. The City procured these professional services in accordance with Federal Aviation Administration Advisory Circular 150/5100-14D.
5. Consultant possesses the skills and expertise necessary to provide such services as desired by the City.
6. This Agreement is authorized by Formal Action of the City Council dated _____.

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

1. TERM OF AGREEMENT

- A.** The initial term of this Agreement shall be December 15, 2010, through June 30, 2012, with three (3) options to extend the term for one (1) year each, which options may be exercised at the sole discretion of the Aviation Director.
- 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 Section 2(A) of this Agreement, unless it is amended to allow additional compensation; or
 - 4) termination pursuant to the provisions of this Agreement.

2. COMPENSATION AND PAYMENTS

A. Maximum Compensation

- 1) 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, in accordance with the Fee Schedule provided in **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 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.
- 2) Consultant shall prepare and submit, at least sixty (60) days prior to the end of each contract year, an annual budget for each subsequent year, for the consideration and approval of the City. Compensation limits for each subsequent year shall be established annually and solely by the City. City shall convey to Consultant any changes affecting budget allocations.

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B. Progress Payments

- 1) Consultant will be compensated for Services in accordance with the schedule provided in **Exhibit B**. Requests for monthly payments by Consultant shall be submitted on the "Contract Payment Request" form and shall be accompanied by a monthly progress report, detailed invoices and receipts, if applicable. This submittal shall include, at a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any software, equipment, systems, work to be delivered, or other work products ("Deliverables") provided, and any subcontractor's actual requests for payment plus similar narrative and listing of its work. Those Services negotiated as a not-to-exceed fee shall be paid in accordance with the work effort expended on that service during the preceding month. Consultant shall pay all sums due to subcontractors for Services and reimbursable expenses in accordance with Section 2(C).
- 2) Consultant shall submit monthly invoices on or before the 15th of every month. Each invoice shall be accompanied with itemized receipts. The invoice shall be submitted free of mathematical errors and/or missing supporting documentation. All appropriate documentation that supports the charges reflected in the invoice shall be provided. Upon finding of an error and/or missing documentation, the City shall return the invoice to Consultant. Consultant shall promptly resubmit the revised 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(s) charged, and a detailed description of the Services performed. Failure of the City to identify an error does not waive any of the City's rights.

Invoices shall be submitted to:

- 3) 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 pre-approved by the City, in writing, and be reasonable and prudent.
- 4) 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

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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. **The City will not reimburse travel expenses for key staff, including Project Managers and Acquisition Agents, to commute to the work site.**

C. PROMPT PAYMENT - CONSULTANT TO SUBCONTRACTORS OR SUPPLIERS

1) Payment to Subcontractor or Supplier

Consultant shall pay to its subcontractors or material suppliers and each subcontractor shall pay to its subcontractor or material suppliers, within seven (7) days of receipt of each progress payment, the amounts attributable to the subcontractor or material supplier for work performed or materials supplied. No contract between Consultant and its subcontractors and material suppliers may materially alter the rights of any subcontractor or material supplier to receive prompt and timely payment as provided herein. Any diversion by Consultant, or any subcontractor, of payments received for work performed on a contract, or failure to reasonably account for the application or use of such payments, constitutes sufficient grounds for the City to take any one or more of the following actions: (1) withhold future payments in the same amount of any money due subcontractor until proper disbursement has been made; (2) refusal of all future bids or offers from Consultant for a period not to exceed one year; or (3) cancellation of the Agreement.

2) Alternate Dispute Resolution

If entitlement to the payment is in dispute between Consultant and its subcontractors or suppliers, the parties to the dispute shall submit the matter to: (1) binding arbitration; or (2) some other form of binding alternative dispute resolution (ADR); or (3) a City-facilitated mediation process. The form of resolution shall be based upon mutual agreement of the parties. The ADR process shall commence within a reasonable period of time, not to exceed fourteen (14) calendar days from receipt of a Notice to Proceed to an ADR process issued by the City. Once an ADR determination has been made on any disputed claim, the determination shall be implemented by the disputing parties within seven (7) calendar days of that determination.

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3) Inclusion of This Provision in Subcontracts

Consultant shall include the provisions of Section 2(C) in every subcontract, including procurement of materials and leases of equipment. Further, as a means of enforcing such provisions, Consultant shall take such action with respect to any subcontract or procurement as the City may direct; provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request the City to enter into such litigation to protect the interests of the City.

4) No Subcontractor Claim

Nothing contained in this Section shall provide a basis for any subcontractor to assert any claim against the City for its administration, enforcement or waiver of the provisions of this Section.

3. SCOPE OF WORK

A. Consultant will provide Services in accordance with the Scope of Work as set forth in **Exhibit A** to the satisfaction of the City. The Scope of Work may be reduced, modified or supplemented with additional detail from time to time during the term of the Agreement. Consultant will provide progress reports to the VARS Program Manager according to a mutually agreed-upon schedule.

B. Consultant and its subcontractors shall act at all times in good faith on behalf of VARS participants and are strictly prohibited from engaging in any relationship with any VARS participant for the purpose of deriving personal gain or favors while performing Services prescribed in the Agreement. The obligations of Consultant and its subcontractors under this Section shall survive the termination of this Agreement.

C. Project Staffing

1) Prior to the start of any work under this Agreement, Consultant shall submit to the City detailed resumés of key staff that will be involved in performing Services prescribed in the Agreement. The City hereby acknowledges its acceptance of such key staff to perform Services under this Agreement as originally proposed by Consultant. If at any time hereafter Consultant desires to change key staff while performing under the Agreement, Consultant shall submit the qualifications of the new staff to the City for prior written approval. Key staff shall include,

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but are not limited to, Project Managers and Acquisition Agents. The City reserves the right to designate which positions are deemed key staff.

- 2) Consultant will maintain an adequate and competent staff of qualified and fully trained persons, as may be determined by the City, throughout the performance of this Agreement to ensure acceptable and timely completion of Services. Consultant shall provide the City, upon request, a list of qualified and trained staff scheduled to work under this Agreement prior to any performance thereunder. Personnel and payroll records shall be maintained by Consultant and made available to the City upon request.
- 3) If the City objects, with reasonable cause, to any of Consultant's staff, Consultant shall take prompt corrective action acceptable to the City and, if required, remove such staff from the project and replace with new staff agreed to by the City.
- 4) Consultant shall comply with the Staffing Plan proposed in its response to the Request for Qualifications (RFQ) and attached hereto as **Exhibit D**.
- 5) Consultant shall make modifications to the Staffing Plan as appropriate; all changes are subject to City review and approval.
- 6) The Staffing Plan shall be kept current and on file at all times with the VARS Program Manager.

D. Subcontractors

- 1) Prior to beginning the work, Consultant shall furnish to the City for approval the names and qualifications of subcontractors under this Agreement as originally proposed by Consultant. Any subsequent changes of the subcontractors are subject to the approval of the City, and such subcontractors shall be hired in compliance with Federal Aviation Administration Advisory Circular 150/5100-14D, subject to a qualification-based, competitive process.
- 2) Consultant shall be fully responsible for the oversight and quality of performance of subcontractors or any other persons either directly or indirectly performing any of the Services such that the Services are performed in accordance with this Agreement. Nothing in this Agreement shall create any contractual relationship between the City and any such person or subcontractor.

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E. Transition of Services

- 1) Consultant recognizes that the Services provided under this Agreement are vital to the CNRP's overall operations; that continuity thereof must be maintained at a consistently high level without interruption; that upon expiration of this Agreement, a successor (either a consultant or the City) may continue these Services; and that Consultant must cooperate in order to effect an orderly and efficient transition.
- 2) Consultant agrees to cooperate with its successor, if applicable, in order to enhance the continuity and consistency of the Services provided under this Agreement.
- 3) Consultant shall maintain complete responsibility for providing the Services under this Agreement during its phase-out period.

4. INDEMNIFICATION OF THE CITY AGAINST LIABILITY

Consultant shall indemnify, defend, save and hold harmless the City and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") 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 wrongful acts, errors or omissions of Consultant or any of its owners, officers, directors, employees or anyone for which Consultant is legally liable. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, 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 its 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 E**. Failure of Consultant and its subcontractors to maintain insurance during the

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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. PERFORMANCE GUARANTEE

- A.** Prior to commencement of work to be performed, Consultant shall provide and maintain during the term of this Agreement a performance bond or irrevocable standby letter of credit (letter of credit) to guarantee the full and faithful performance by Consultant of all the terms and conditions of this Agreement and stand as security for payment by Consultant of all claims by the City. The City may draw or make a claim against the performance guarantee for failure to perform the terms and conditions of the Agreement. If the City draws or makes a claim on the performance guarantee, then Consultant shall replenish the performance guarantee to its original amount within thirty (30) days' notice of the City's draw or claim. Consultant shall increase the performance guarantee upon the written demand of the Aviation Director, provided such increases are found reasonable and necessary by the City. Consultant's failure to provide a performance guarantee under this Section shall be a material breach of this Agreement. The required amount of the performance guarantee for this Agreement is _____ Dollars (\$_____) *(to be equivalent to three months of Services)*.
- B.** If the performance guarantee is in the form of a performance bond, the performance bond shall be issued in a form that is satisfactory to the City and must be issued by a surety company authorized to write surety business in Arizona. The surety company providing the performance bond must have an A.M. Best Rating of B+ VI or better for the past four (4) quarters.
- C.** If the performance guarantee is in the form of a letter of credit, the letter of credit shall be issued by a local financial institution in the Phoenix metropolitan area, in a form that is satisfactory to the City, and the City must be able to draw upon the letter of credit at any of the financial institution's counters in the Phoenix metropolitan area. Any modification to the City's letter of credit form must be approved by the City. If a letter of credit is obtained, then unless the City receives a written extension of that letter of credit, in a form acceptable to the City, at least sixty (60) days before the end of the term of such letter of credit, the City, without notice to Consultant, may draw upon the full amount of that letter of credit and retain all proceeds as a cash security pursuant to this Section. The City will not pay interest to Consultant on any performance bond or letter of credit. See **Exhibit F** attached hereto for the City's required letter of credit form.

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7. 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 is an independent contractor. Neither Consultant nor any of Consultant's agents, employees or helpers shall be deemed to be the employee, agent, or servant of the City. The City is interested in only the results obtained under this Agreement; the manner, means and mode of completing the same are under the sole control of Consultant.
- 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.

8. CONFIDENTIALITY AND DATA SECURITY

- A. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Consultant or its subcontractors in connection with this Agreement, is confidential, proprietary information owned by the City. Except as specifically provided in this Agreement, Consultant and its subcontractors 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, in accordance with federal, state and local law and, if applicable, in compliance with Payment Card Industry Data Security Standards, 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.
- C. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

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- D. In the event that data collected or obtained by Consultant in connection with this Agreement is believed to have been compromised, Consultant shall immediately notify the Aviation Department's Deputy Chief Information Officer and VARS Program Manager. 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.
- E. Consultant agrees that the requirements of this Section shall be incorporated into all subcontracts entered into by Consultant. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.
- F. The obligations of Consultant and its subcontractors under this Section shall survive the termination of this Agreement.

9. CONTACTS WITH THIRD PARTIES

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

10. AFFIRMATIVE ACTION REQUIREMENT

In order to do business with the City, Consultant must comply with Phoenix City Code, 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.

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11. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

A. Obligation

Consultant agrees to provide opportunities for the fair and full utilization of DBEs by complying with the requirements of the Disadvantaged Business Enterprise Contract Clause for Consultants (see **Exhibit G**). Included in these requirements is the achievement of the mandatory utilization of DBEs in the performance of work under this Agreement, and/or substantiation that a good faith effort to ensure that DBEs had the maximum opportunity to participate in the performance of work under this Agreement. Nothing in this clause shall be construed to require the utilization of DBEs that are not qualified or available.

B. Prior to any work being performed, Consultant shall provide a “Letter of Intent to Perform as a Subconsultant/Subcontractor/Supplier” (Attachment C), “Proposed DBE Participation” (Attachment D), and “Subconsultant/Subcontractor/Supplier Contact List” (Attachment E). These forms will identify the certified DBE subconsultants/subcontractors/suppliers that will be utilized to meet the required goals. Consultant shall also provide copies of all purchase orders and/or contracts with subconsultants/subcontractors/suppliers used to meet the utilization goals for this Agreement.

C. Any DBE added to the Agreement after the original documents have been submitted will be added to the DBE Utilization form.

D. Established DBE Requirement

A goal for this project has been established at 8.95%.

E. Consultant agrees that the following clause is incorporated into the Agreement documents:

“Consultant, subcontractor, or subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by Consultant to carry out these requirements is a material breach of this Agreement which may result in the termination of this Agreement or such other remedy as the City deems appropriate.”

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In addition, Consultant shall incorporate the above assurance, verbatim, in any subcontract executed by Consultant including materials and procurement of leases of equipment.

12. AUDIT/RECORDS

- A.** The City reserves the right, at reasonable times, to audit Consultant's books, payroll expenses, document papers, and records (hereinafter collectively referred to as "records") relative to the performance of Services under this Agreement. If the project encompassing this Agreement is federally funded, Consultant shall permit the City, the Federal Aviation Administration (FAA), the Comptroller General of the United States, or any of the duly authorized representatives, access to Consultant's records that are directly pertinent to the specific grant program, for the purpose of making audits, examinations, excerpts, and transcriptions. Consultant agrees to produce for audit all requested records at its local office upon a thirty (30) day prior written notice. If, as a result of the audit, the City determines that it has overpaid any fees due the Consultant, Consultant shall be notified of the City's findings and invoiced for the total amount due, including any delinquent fees owing pursuant to Phoenix City Code § 4-7, and any amendments thereto, from the date the fees were first due. In the event any deficiency of two percent (2%) or greater of the amount paid by the City is ascertained, Consultant agrees to pay the City for the cost of the City's audit and for all deficiencies and delinquent fees as stated above. The City reserves the right to decrease the Agreement price and/or payments made on this Agreement if, upon audit of Consultant's records, the audit discloses Consultant has provided false, misleading, or inaccurate cost or pricing data.
- B.** All records pertaining to this Agreement shall be kept on a generally accepted accounting basis for a period of three (3) years after all pending Services are completed and City makes final payment for Services under this Agreement. Consultant is required to maintain all such books and records at a location in Phoenix, Arizona, mutually acceptable to the City and Consultant.
- C.** Consultant shall include the above listed provisions in all of its agreements with subcontractors providing Services under this Agreement to ensure the City, the FAA, the Comptroller General of the United States, or any of the duly authorized representatives, has access to the subcontractors' records to verify the accuracy of any records. The City reserves the right to decrease the Agreement price and/or payments made on this Agreement if the above provision is not included in subcontractors' contracts, and one or more subcontractors do not allow the auditing or inspection of their records to verify accuracy or appropriateness.

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13. COMPLIANCE WITH LAWS

A. Compliance with Present and Future Laws

Consultant shall comply with all existing and subsequently enacted federal, state and local laws, ordinances, executive orders, codes, rules and regulations, advisory circulars and any other regulatory documents that are, or become, applicable to Consultant's or subcontractor's performance under this Agreement. If a subsequently enacted law or regulatory document imposes substantial additional costs on Consultant, a request for an amendment may be submitted pursuant to Section 16.

B. State and Federal Certifications, Warranties and Requirements

Consultant acknowledges that Phoenix Sky Harbor International Airport is part of the national transportation system and, as such, is operated for the benefit of the public and is, from time to time, the recipient of federal funds for such purpose. The City is the owner and operator of Phoenix Sky Harbor International Airport and, as a recipient of federal funds, the City is obligated to make certain assurances to the federal government that it complies with various requirements of the laws of the United States, which requirements become also the obligation of the City's contracting parties. Additionally, the City's contracting parties must certify that they are in compliance with state and federal laws, agree to follow those laws and, in some cases, the contracting parties must insert specific language into their subcontracts to ensure that their subcontractors are also in compliance with federal and state laws.

Consultant certifies or warrants that it is in compliance and agrees to adhere to the various state and federal contract requirements as set forth in this Agreement and in **Exhibit H**, Certification Regarding Debarment; **Exhibit I**, Restrictions on Federal Public Works Projects; **Exhibit J**, Trade Restriction Clause; and **Exhibit K**, Supplemental Terms and Conditions. All of the foregoing exhibits are attached hereto and incorporated herein by this reference. If any of Consultant's certifications or warranties is determined to be false or Consultant is unable to comply with any required law, certification or warranty during the term of the Agreement, this Agreement will be terminated immediately without notice or other remedies may be imposed due to noncompliance or false certification.

C. Compliance with Environmental Laws

Consultant shall, at its own expense, comply with all present and subsequently enacted environmental laws, and any amendments thereto, as set forth in **Exhibit L** and incorporated herein by reference.

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D. Federal Acquisition Regulations

Consultant acknowledges that the CNRP VARS project is funded by federal grants and passenger facility charges. Consultant is providing Real Estate Acquisition Services to assist the City and as such Consultant shall comply with the Federal Acquisition Regulations (FAR) Part 31 that specifically addresses acceptable cost principle guidelines when working on federally assisted projects. If Consultant is found to be in violation of these federal guidelines, Consultant agrees to fully refund and compensate City for those costs billed to City not in compliance with the aforementioned federal guidelines, including any interest due upon demand by the City. The interest rate on the monies owed to the City will be charged from the date due and will be assessed an eighteen percent (18%) per annum interest fee.

14. CONSULTANT AND SUBCONTRACTOR WORKER BACKGROUND SCREENING

A. Contract Worker Background Screening

Consultant agrees that all contract workers and subcontractors [collectively "Contract Worker(s)"] that Consultant furnishes to the City pursuant to this Agreement shall be subject to background and security checks and screening (collectively "Background Screening") at Consultant's sole cost and expense as set forth in this Section. The Background Screening provided by Consultant shall comply with all applicable laws, rules and regulations. Consultant 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 Consultant from any liabilities that may arise out of Consultant's Services under this Agreement or Consultant's failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Consultant 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

Consultant agrees that it will verify legal Arizona worker status as required by Arizona Revised Statutes (A.R.S.) § 41-4401. Consultant further agrees that it will conduct a background check for real identity/legal name on all Contract Workers prior to proposing the Contract Worker to the City.

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C. Additional City Rights Regarding Security Inquiries

In addition to the foregoing, the City reserves the right but not the obligations to: (1) have a Contract Worker be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of Contract Workers; and (4) object, at any time and for any reason, to a Contract Worker performing work (including supervision and oversight) under this Agreement.

D. Consultant Certification

By executing this Agreement, Consultant certifies and warrants that Consultant 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, Consultant further certifies and warrants that Consultant has satisfied all such Background Screening requirements as required. A Contract Worker rejected for work under this Agreement shall not be proposed to perform work under other City contracts or engagements without the City's prior written approval.

E. Terms of This Section Applicable to all of Consultant's Contracts and Subcontracts

Consultant 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.

F. Materiality of Background Screening Requirements; Indemnity

The Background Screening requirements of this Section are material to the City's entry into this Agreement and any breach of this Section by Consultant shall be deemed a material breach of this Agreement. In addition to the indemnity provisions set forth in Section 4 of this Agreement, Consultant 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 Consultant or the City for failure to satisfy this Section.

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G. Continuing Duty; Audit

Consultant's obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Agreement. Consultant shall notify the City immediately of any change to a Background Screening of a Contract Worker previously approved by the City. Consultant shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Consultant's compliance with this Section pursuant to Section 12.

15. CONTRACT WORKER ACCESS CONTROLS, BADGE AND KEY ACCESS REQUIREMENTS

A CONTRACT WORKER SHALL NOT BE ALLOWED TO BEGIN WORK IN ANY CITY FACILITY WITHOUT: (1) THE PRIOR COMPLETION AND THE 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.

A. Badges

After receipt of the badge application, 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 as requested by the badging office. Any and all fees associated with security badging will be assessed in compliance with Phoenix City Code § 4-22.

B. 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 Consultant for each key issued.

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C. Stolen or Lost Badges or Keys

Consultant shall report lost or stolen badges or keys to the City immediately. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

D. 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. Consultant 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.

E. Consultant's Default; Liquidated Damages; Reservation of Remedies for Material Breach

Consultant's default under this Section shall include, but is not limited to, the following: (1) Contract Worker gains access to a City facility(s) without the proper badge or key; (2) Contract Worker uses a badge or key of another to gain access to a City facility; (3) Contract Worker commences Services under this Agreement without the proper badge, key or Background Screening; (4) Contract Worker or Consultant submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (5) Consultant 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. Consultant 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, Consultant 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 Consultant'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, Consultant shall be liable for and shall pay to the City the sum of one thousand dollars (\$1,000.00) for each breach by Consultant 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 Consultant breaches this Section. Further, the parties expressly acknowledge and

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agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages in the event that Consultant breaches this Section. The parties further agree that three (3) breaches by Consultant of this Section arising out of any default within a consecutive period of three (3) months, or three (3) breaches by Consultant 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 Consultant 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.

16. 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.

17. 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 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.

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18. 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.

19. NOTICES

- A.** 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 the City:

Alice Stallings
Contract Administrator
City of Phoenix Aviation Department
3400 East Sky Harbor Boulevard, Suite 3300
Phoenix, AZ 85034-4405

Telephone: (602) 273-2051

Facsimile: (602) 273-8809

E-Mail: alice.stallings@phoenix.gov

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

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- C. 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.

20. 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.

21. 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.

22. SAVINGS PROVISION

Should any provision of this Agreement be declared invalid by a court of competent jurisdiction, the remaining terms shall nonetheless remain effective, provided that elimination of the invalid provision does not materially prejudice either the City or Consultant with regard to their respective rights and obligations.

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 A.R.S. § 42-17108. Therefore, Consultant must submit billings for Services performed or costs incurred prior to the close of a fiscal year within ample time to allow payment within this 60-day period.

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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

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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.

C. Physical Site Conditions

Consultant shall satisfy itself concerning the nature and location of the Services, the general and local conditions, and other restrictions affecting the Services. The failure of Consultant to acquaint itself with any applicable conditions and restrictions will not relieve it from the responsibility for properly estimating either the difficulties or the costs of completing the Services required by this Agreement, and will not be grounds for adjusting either the price or the completion schedule.

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 Section is not intended as a limitation of such other remedies as may be available to the City under law or equity.

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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. This constitutes force majeure.

28. INTELLECTUAL PROPERTY

A. Rights in Data and Rights to Inventions

Consultant agrees to adhere to the rights in data and rights to inventions requirements as set forth in **Exhibit M**.

B. Intellectual Property Indemnification

In addition to the indemnification in Section 4 above, Consultant agrees to defend, at its own expense, and to indemnify and hold harmless the City and its officers, agents, and employees from and against all judgments, claims, damages, suits, liabilities, settlements, costs and demands, including reasonable attorneys' fees, suffered or incurred by the City as a result of any claim that the Deliverables infringe the patents, copyrights, trade secrets or other intellectual property rights of third parties, provided that Consultant is notified in writing of such claim. Consultant will have the sole right to control the defense of all such infringement claims, lawsuits and other proceedings, including the right to settle the same. In no event will the City settle any such claim, lawsuit, or proceeding without Consultant's prior written consent. The City will cooperate with Consultant, at Consultant's expense, in a reasonable way, to facilitate the settlement or defense of such claim. If, as a result of any claim of infringement by Consultant, the City is enjoined from using the Deliverables provided under this Agreement, or if Consultant reasonably believes that the Deliverables are likely to become the subject of a claim of infringement, Consultant may, at Consultant's option and expense: (1) procure the right for the City to continue to use the Deliverables; or (2) replace or modify the Deliverables so as to make them non-infringing and of equal or superior function and capability for the purpose for which the Deliverables were provided.

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C. Limitation of Liability

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

D. Intellectual Property Ownership

All data, information, reports, drawings, specifications, computations, notes, renderings, or other documents or materials prepared by Consultant and any discovery or invention which arises or is developed in the course of or under this Agreement as instruments of service shall become the property of the City upon full payment for Services performed by Consultant.

E. Document Delivery

- 1) All documents, together with all unused materials supplied by the City, are to be delivered to the City upon completion or termination of this Agreement before the final payment is made to Consultant.
- 2) All documents prepared by Consultant shall be prepared in a format and at a quality approved by the City.
- 3) 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.
- 4) 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. Acceptance or incorporation of the City's comments shall not relieve Consultant from responsibility for the correctness of the Services and documentation furnished by Consultant within Consultant's expertise.

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F. Reservation

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

G. Warranty Against Infringement

- 1) Consultant warrants that the Deliverables will be free of the rightful claim of any third party by way of infringement or misappropriation of patent, copyright, trade secret, trademark or other rights arising under the laws of the United States. Consultant further warrants that no act or omission of Consultant will result in a third party holding a claim (other than infringement) that interferes with the City's enjoyment of the Deliverables.
- 2) Consultant warrants that it owns or possesses the necessary rights, title and licenses necessary to perform its obligations hereunder.
- 3) Consultant warrants that, as of the effective date and throughout the term of this Agreement, Consultant has not conveyed any rights or licenses to any third party regarding the Deliverables.

H. Non-Disclosure

- 1) Continuing in perpetuity, all data, 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. Consultant shall not disclose, without the City's prior written consent, any such information to any person, firm, corporation, association, or other entity other than persons in the City's organization qualified to receive such information, for any reason or purpose whatsoever, nor shall it make use of any such confidential or proprietary information for its own purposes or for the benefit of any person, firm, corporation or other entity, except the City.
- 2) Consultant agrees to act as this information's trustee and as trustee of any other confidential information learned in connection with Consultant's relationship with the City. Consultant further represents to the City that, as an inducement to enter this Agreement, Consultant will hold this information in trust and confidence for the City's sole benefit and use.

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- 3) Further, 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.
- 4) 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.
- 5) Consultant agrees that the requirements of this Section shall be incorporated into any subcontracts entered into by Consultant. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Consultant under this Section shall survive the termination of this Agreement.

I. Mutual Non-disclosure

- 1) Each party (the "Disclosing Party") may from time to time during the term of this Agreement disclose to the other party (the "Receiving Party") certain non-public information regarding the Disclosing Party's business, including technical, marketing, financial, personnel, planning, and other information ("Confidential Information"). The Disclosing Party shall mark all such Confidential Information in tangible form with the legend 'confidential', 'proprietary', or with similar legend. With respect to Confidential Information disclosed orally, the Disclosing Party shall describe such Confidential Information as such at the time of disclosure, and shall confirm such Confidential Information as such in writing within thirty (30) days after the date of oral disclosure. Regardless of whether so marked, however, any non-public information regarding the software used in the Deliverables shall be deemed to be Confidential Information.
- 2) Except as expressly permitted by this Agreement, the Receiving Party shall not disclose the Confidential Information of the Disclosing Party, using the same degree of care which the Receiving Party ordinarily uses with respect to its own proprietary information, but in no event with less than reasonable care. The Receiving Party shall not use the Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and shall limit the disclosure of the Confidential Information of the Disclosing Party to the employees or

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

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

J. Supervision of Others

Consultant shall take all reasonable precautions to prevent any other person with whom Consultant is or may become associated (whether as supervisor, employee, owner or otherwise) from acquiring Confidential Information from or through Consultant and/or using or divulging such Confidential

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Information at any time; provided, however, Consultant shall not be responsible or liable, nor shall it be in breach of this Section, if any other person shall acquire, use, or divulge such Confidential Information as a result of a forcible entry into the office or file of the City.

29. ACCESS TO CITY OF PHOENIX NETWORKED ASSETS

- A.** Access to the City's networked assets is only granted to Consultant and its subcontractors if the Aviation Director or his designee determines there is a contractual reason for access to City of Phoenix networked assets. These assets may include, but are not limited to, servers, business applications and/or data.
- B.** Consultant shall immediately notify the Aviation Department's Deputy Chief Information Officer when a member of its staff or its subcontractor is no longer providing Services under the terms of this Agreement. All system privileges and access to City information shall cease immediately and all City information disclosed to users shall be returned or destroyed.
- C.** Consultant and its subcontractors shall comply with all applicable City standards, policies, and procedures for access privileges, copies of which may be made available to Consultant and its subcontractors upon request.
- D.** Consultant's and its subcontractors' access shall be immediately revoked by the City upon termination, cancellation or expiration of this Agreement.

30. REMOTE ACCESS TO CITY OF PHOENIX NETWORKED ASSETS

- A.** Access to the City's Virtual Public Network (VPN) is only granted to Consultant and its subcontractors if the Aviation Director or his designee determines there is a contractual reason for remote access to City of Phoenix networked assets. These assets may include, but are not limited to, servers, business applications and/or data.
- B.** Each individual requesting a VPN account must successfully complete a background screening and security check at Consultant's sole cost and expense. The Background Screening provided by Consultant shall comply with all applicable laws, rules and regulations.
- C.** Consultant and its subcontractors understand that the City may, from time to time and at its sole discretion, make changes to the security infrastructure in order to protect the interests of its citizens. Such changes may require Consultant and its subcontractors to reconfigure or change elements of their access to the VPN and that such changes may occur without prior notification. Any changes in VPN access methods are wholly the

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responsibility of Consultant and its subcontractors and the City shall not be liable for any expenses incurred by Consultant and its subcontractors in having to update their VPN access. A current list of acceptable operating systems, anti-virus and firewalls may be made available to Consultant and its subcontractors upon request.

- D. Consultant and its subcontractors shall comply with all applicable City standards, policies, and procedures for access privileges, copies of which may be made available to Consultant and its subcontractors upon request.
- E. Consultant's and its subcontractors' access shall be immediately revoked by the City upon termination, cancellation or expiration of this Agreement.

31. ACCOUNT MANAGEMENT PROCEDURES

- A. Every individual who uses a City computer system shall be assigned a unique user ID in accordance with City information technology standards and procedures. Every City-issued user ID and related password is intended for the exclusive use of a specific individual. While user IDs can be shared in electronic mail messages and in other places, passwords shall never be shared with anyone.
- B. Individuals are responsible for all activity that takes place with their City-provided user ID and password or other authentication mechanism. Individuals shall change their passwords immediately if they suspect they have been discovered or used by another person.
- C. Individuals shall logoff from multi-user systems connected to any City internal network when they leave their desks for more than a few minutes.
- D. Individuals shall not test or attempt to compromise computer or communication system security measures. Incidents involving unapproved system hacking, password guessing, file decryption, bootleg software copying, or similar unauthorized attempts to compromise security measures may be unlawful and may result in immediate termination of this Agreement without notice. Short-cuts bypassing systems security measures, pranks, and practical jokes involving the compromise of systems security measures are absolutely prohibited.
- E. Consultant shall report all significant changes in staff duties or employment status promptly to the system administrator responsible for applicable user IDs.

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- F. Consultant shall immediately notify the Aviation Department's Deputy Chief Information Officer if other access control mechanisms are broken or if it suspects that these mechanisms have been compromised.

32. PASSWORD MANAGEMENT PROCEDURES

- A. The creation of passwords shall be in accordance with City information technology standards and procedures.
- B. Individuals shall choose fixed passwords that are difficult to guess. Passwords shall not be related to a user's job or personal life. Passwords shall not be a word found in the dictionary or some other part of speech.
- C. Individuals shall not construct passwords that are identical or similar to passwords they have previously employed.
- D. Individuals shall not share a fixed password with anyone, including supervisors and co-workers. Individuals shall employ mechanisms authorized by the Aviation Director or his designee to share information such as local server shared directories, electronic mail, public directories on local area network servers, intranet pages, or floppy disks.
- E. Individuals shall not store fixed passwords in any computer files, such as logon scripts or computer programs, unless the passwords have been encrypted with authorized encryption software.
- F. Passwords shall not be written down unless a transformation process has concealed them, or they are physically secured, such as placed in a locked file cabinet.
- G. Aside from initial password assignment and password-reset situations, if there is reason to believe that a password has been disclosed to someone other than the authorized user, the password shall be changed immediately.

33. RELEASE OF INFORMATION - ADVERTISING AND PROMOTION

- A. Consultant and its subcontractors 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 and its subcontractors without the prior written consent of the City.

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- B. Consultant shall comply with the Aviation Department's "Contractor Communication Procedures" available at <http://skyharbor.com/about-sky-harbor/contractor-communication-procedures.html>.

34. 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 contracting firm. For breach or 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 the City determines Consultant has an actual or apparent conflict of interest with the purposes of this Agreement, and the provisions and procedures set forth in Section 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 A.R.S. § 38-511.

35. CLAIMS OR DEMANDS AGAINST THE CITY

- A. 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,

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A.R.S. §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law shall control.

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

36. 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.

37. 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.

38. THIRD PARTY BENEFICIARY CLAUSE

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

39. FEDERAL AVIATION ADMINISTRATION

The parties acknowledge that the Federal Aviation Administration is not a party to this Agreement.

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40. RESTRICTIONS ON LOBBYING CERTIFICATION

A. Consultant certifies, to the best of its knowledge and belief, that:

- 1)** No federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 2)** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3)** Consultant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

41. SURVIVAL

All warranties, representations, indemnifications and certifications by Consultant shall survive the completion or termination of this Agreement.

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

CONSULTANT

CITY OF PHOENIX, a municipal corporation
DAVID CAVAZOS, City Manager

By: _____

By: _____

Danny W. Murphy
Aviation Director

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

01/01/10

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**EXHIBIT A
SCOPE OF WORK**

Consultant will acquire property rights on behalf of the City of Phoenix (City) from property owners located in the Voluntary Acquisition and Relocation Services (VARs) area. These property rights may include, but are not limited to, rights of entry and fee title. Consultant will also be responsible for ensuring property is free and clear of all liens and encumbrances. Primarily, residential properties are acquired through the VARs program. Some non-residential properties may be acquired, if deemed eligible. All acquisitions must be performed in accordance with federal, state, and local laws, policies, procedures, and regulations, and in accordance with a time schedule set by the City. Consultant staff shall respond to inquiries and/or requests for assistance within two (2) hours during normal business hours.

Responsibilities include, but are not limited to, the following services:

A. Initial Acquisition Case Work

1. Create acquisition file folder(s) upon receipt of application from interested participant(s).
2. Request title report from assigned title company.
3. Receive title report and review vesting and requirements.
4. Upon review of title report, determine title readiness for acquisition and make recommendation on whether to proceed with acquisition to the Community Noise Reduction Program (CNRP).
5. Provide notification copy of title report to CNRP.
6. Prepare Title Requirements letter and present to homeowners.
7. Work with property owners, property owners' heirs, previous property owners, lien holders, title companies, attorneys, courts, etc., to obtain necessary releases in order to clear any title issues.
8. Attend the classification meeting with the VARs Relocation Agent.
9. Prepare and process the City's Payment Control Document (PCD) to pay for the cost of the preliminary title report.
10. If requested, participate in any outreach to eligible homeowners conducted by CNRP. Outreach may include, but is not limited to:
 - a. Participate in door-to-door contact with residents.
 - b. Participate in visual inspection of properties via in-car survey work.
 - c. Assist with and/or prepare correspondence to homeowners.

B. Acquisition Case Work

1. Provide Acquisition Agents to conduct acquisition case work as assigned by the City. Assigned Acquisition Agents must be licensed real estate agents in Arizona.

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2. Conduct the program overview/initial interview with the VARS Relocation Agent and VARS Customer Service Agent.
3. Prepare the request for appraisal packet, submit to CNRP, and update information in the City's Finance Department's (Finance) computerized real estate system.
4. If needed, prepare and submit the request for the personal property appraisal to CNRP.
5. Submit requests for the Phase I environmental site assessment report (Phase I) via e-mail to CNRP. The e-mail will include the following:
 - a. Copy of title report.
 - b. Parcel map and legal description.
 - c. All appropriate inquiry information.
6. Attend appraisal inspection appointment.
7. Receive and review the certified appraisal report. Notify Finance's Real Estate Division (Real Estate) of any feedback regarding the report.
8. Prepare offer letters and extensions, as needed.
9. Receive and review the certified Phase I report. Communicate any findings to the property owners.
10. Present the offer to the property owners based on the fair market value appraisal report received on behalf of the City and obtain signatures on documents.
11. Negotiate with lenders on short sales.
12. Follow up with property owners; request and execute extensions to offers as needed.
13. If necessary, locate and recommend a title company for use with VARS acquisitions.
14. Review and assist with responses to any request for clarification/additional information submitted by property owners.
15. Prepare the purchase agreement.
16. Present and review the purchase agreement and obtain signatures.
17. Update the salvage list and execute the purchase agreement.
18. Request to open escrow with the assigned title company.
19. Prepare the City's Request for Council Action (RCA) form and obtain the City's assigned ordinance number.
20. Order the estimated settlement statement and updated title report from the assigned title company.
21. Prepare and process the PCD for the purchase amount, including escrow fees.
22. Obtain acquisition check to the assigned title company.
23. Coordinate and close escrow when all parties are ready. Notify all parties of closing.
24. Process any refunds to the City or need for additional funds.
25. Obtain original closing documents from the title company.

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26. Prior to close of escrow, receive and review an updated title report to ensure that all requirements have been removed from the title report and the property is clear for acquisition.
27. Throughout the process, conduct proper follow-up with the property owner to answer any questions and address any concerns.
28. Provide the project team with e-mail updates regarding appointments, inspections, contract information, escrow schedule and closing dates.
29. Maintain continual communication with the VARS Customer Service Agent(s) and VARS Housing Specialist(s).
30. Review, complete and maintain all acquisition progress spreadsheets.
31. Provide current and detailed contact reports for each parcel (ownership) documenting all actions relating to the parcel, including dates, locations, and names. Each entry will include the time increment spent on the activity to at least every 15 minutes. Contact reports shall be presented to the City in typed form when invoices for payment are submitted.
32. Maintain (on the job site or other mutually agreed-upon location) accurate records and documents which will be available for inspection by City officials. A separate file will be maintained for each parcel which will include a detailed and timely record of all contact efforts previously described. Copies or originals of all correspondence and documents will be retained in the file using "acco" type fasteners.
33. Review and respond to and/or correct files in response to Corrective Actions Notices from VARS audit staff.
34. Correct any deficiencies noted by the City in files and/or invoices, at no additional fee.

C. Acquisition Project Manager/Project Management

1. Ensure acquisitions are conducted in compliance with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended, (42 U.S.C. §§ 4601 et seq.) and its implementing regulations at 49 C.F.R. Part 24.
2. Provide a Project Manager who will be available and familiar with project status at all times. The Project Manager and/or staff assigned to the program will attend meetings, workshops, and conferences as requested by the City.
3. Attend all project meetings as requested.
4. Attend community meetings as requested.
5. Prepare presentations and provide information updates at meetings as requested by CNRP.
6. Provide weekly reports and other reports on an as-needed basis.
7. Provided monitoring and tracking of Disadvantaged Business Enterprise (DBE) subcontractors and preparation of DBE reports for the City's Equal Opportunity Department (EOD).
8. At the request of CNRP, collaborate and meet with Real Estate to seek guidance and best practices utilized in other City real estate transactions.

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9. Process all invoicing and required invoicing reports for Consultant and subcontractors to CNRP.
10. Attend and participate in team partnering/training.
11. Participate in implementation of the CNRP strategic plan.
 - a. Manage VARS progress toward accomplishing the CNRP strategic plan.
 - b. Assist in developing a strategic plan schedule for measuring plan goals.
 - c. Participate in strategic plan revisions if reviews indicate changes are required.
 - d. Provide monthly progress reports of VARS efforts.
 - e. Assist in developing and coordinating quarterly training for CNRP managers and leaders as requested by the VARS Program Manager.
12. Develop, attend and present community workshops, as requested.
13. Other duties as requested in association with the acquisition process.

D. Use of the City's Technology Systems

1. Assist with implementation of information technology services
 - a. Keep Consultant's technological operations current to support VARS day-to-day activities.
 - b. Provide network and desktop security procedures consistent with the City's guidelines that will allow users remote access using the City's Virtual Private Network (VPN) and the City's Document Management Systems (DMS).
 - c. Serve as liaison to VARS acquisition staff as it relates to information technology services and work cooperatively with CNRP and the Aviation Department's Technology Division (Technology) as needed.
 - d. Utilize Finance's computerized real estate system to request appraisal reports.
 - e. Maintain accuracy of City data when utilizing the City's technology software.
2. Assist with CNRP's Records and DMS
 - a. Collaborate with VARS and other City staff/consultants to maintain and support CNRP's web-based DMS.
 - b. Access CNRP's web-based DMS using logins and passwords assigned by Technology and review and retrieve records as needed.
 - c. Follow standard operating procedures developed by VARS and Aviation for archiving and destruction of hardcopy files and electronic files.
 - d. Collaborate and work cooperatively with Technology in end-user applications of the DMS and scanning equipment.
 - e. If requested, scan, upload, and maintain all VARS and contract documents into the DMS (Open Text's Livelink system, using Kofax scanning software).
 - f. If requested, provide staff for real time scanning.

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3. Assist with CNRP's Geographical Information System/Case Management System (GIS/CMS)
 - a. Staff shall be required to remotely access CNRP's GIS/CMS system via VPN at Consultant's expense. Such access is contingent on the completion of a criminal history record check for Consultant's assigned staff. Information about the process is available at <http://skyharbor.com/about-sky-harbor/security-badging.html>.
 - b. Access CNRP's web-based GIS/CMS using logins and passwords assigned by Technology.
 - c. Access Aviation's web-based VPN using logins and passwords assigned by Technology.
 - d. Complete forms and coordinate with CNRP and Technology for background checks and access to the GIS/CMS using VPN software.
 - e. Assist VARS and Technology in identifying the operational needs of VARS to ensure efficient and effective utilization of the GIS/CMS.
 - f. Collaborate with Technology and CNRP staff to ensure that the GIS/CMS is accurate and dependable.
 - g. Participate in workflow business system analysis meetings to further develop the GIS/CMS for VARS tracking and reporting.
 - h. Data entry into the GIS/CMS for VARS tracking and reporting as established by CNRP and in compliance with established policies and procedures.
 - i. Collaborate and work cooperatively with Technology when requesting and/or modifying VARS reports and maps.
 - j. Input of GIS/CMS issues and/or enhancements into the City's Help Desk process and/or software.
 - k. Participate in monthly CNRP GIS/CMS/Technology meetings.
 - l. Respond to inquiries from Technology and/or other City staff/consultants in regards to VARS tracking in the GIS/CMS.

E. Acquisition Courier Services

1. Provide courier services for files, checks, and other documents to/from CNRP offices to/from Finance offices. Courier services will be provided at a minimum one time per day.
2. Deliver acquisition check(s) to the assigned title company.
3. Deliver closed acquisition files to Real Estate.
4. Deliver acquisition documents to/from CNRP offices.
5. Deliver appraisal reports to CNRP from Real Estate.
6. Once Aviation's Financial Management Division releases the PCD, deliver original documents to Finance.
7. Make daily trip to the Calvin C. Goode Building for deliveries and pickups; and Terminal 3/Annex as needed.

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F. Acquisition File Closure

1. Redact the entire acquisition file for account numbers, birth dates and social security numbers.
2. Prepare and insert CNRP's Document Identifier Document (DID) sheets used for scanning of files into the acquisition file.
3. Close acquisition file and deliver to Real Estate.

G. Transition to Successor and/or Conclusion of Program (if applicable)

1. Work cooperatively with, the VARS Program Manager, City staff and other City contractors, if applicable, to ensure a seamless transition upon termination of the Agreement, or conclusion of the existing VARS program.
2. Provide phase-in training to its successor, if applicable, for up to thirty (30) days prior to expiration of this Agreement at no extra charge to the City. Phase-in training shall comprise a maximum of thirty (30) working days, eight (8) hours per day, and should include system operations procedures, record keeping, reports, procurement procedures, etc.
3. Review and receipt of all VARS files, including status of scanning and auditing efforts.
4. Index and receipt of all documents, collateral material, and any other material created on behalf of the City.
5. Review and receipt of all documents and reports in their native format (i.e., not PDF) and all other material created on behalf of the City by City-approved method (i.e., load to document management system, hard copies, electronic copies via external hard drive transfer).
6. Review and receipt of all City assets.
7. Completion of all outstanding documentation, training, and assignments identified by City staff.

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EXHIBIT B
FEE SCHEDULE

Fees to be Negotiated
Subject to City Approval



City of Phoenix

ADMINISTRATIVE REGULATION SUBJECT BUSINESS, CONFERENCE AND TRAINING TRAVEL AND RELATED EXPENSES	A.R. NUMBER
	3.41 Revised
	FUNCTION Financial and Purchasing
	Page 1 of 9
	EFFECTIVE DATE September 1, 2006
	REVIEW DATE

Purpose

The City must engage in travel for a variety of reasons. In our complex and highly technical world, sometimes important training is only available outside the state. The training can be technical (computer language and systems, DNA testing, water chemistry, environmental issues, etc.), administrative (Federal program or grant regulations) or regulatory (firefighting or helicopter certification requirements). Travel is necessary for conferences in which state-of-the-art innovations and practices are shared for improving public service. Sometimes travel is necessary to conduct business (Police Officers who travel to return criminals for trial or to interview witnesses, attorneys who are deposing witnesses or seeking to settle lawsuits, staff inspecting buses or other equipment being manufactured). In addition, international travel may occasionally be warranted to further economic development goals for the community.

This administrative regulation (AR) applies to all City employees, elected officials, board and commission members and volunteers. Throughout this AR City employees, elected officials, board and commission members and volunteers are collectively referred to as "travelers."

General Policies

Any approval of business travel, conference or training attendance should include the following considerations:

- All approval processes must be consistent, including travel funded by enterprise funds, special revenue funds, general funds, grant funds or non-City funds.
- Business travel, conference or training events must provide a clear and understandable benefit to the City, our employees and the community. If the training or travel did not take place, how would the City be disadvantaged?
- If several potential travelers need the same training, would it be more cost effective to bring in a trainer? Would other departments benefit from this type of training?
- Generally, attendance at professional organization conferences should occur when attendees are active within that organization. Attendance at executive board meetings of professional organizations should occur when the organization is clearly related to the attendee's usual professional duties.
- Is equivalent training available through Employee Development or a local vendor?
- Is the specific training session or conference appropriate for the person attending? If unsure, departments should consult with the Personnel Department.

Required Approvals

At a minimum, all budgeted travel including requests to travel, estimated expenses, cash advances and final expense reports must be approved by the department/function head. His or her appointed "acting" department/function head may approve when the department head is unavailable. If the traveler is at a department/function head level or higher the travel must be approved by his/her immediate supervisor.

The City's four largest departments – Police, Parks, Fire and Water will be allowed an exception to this rule. Because these departments each have large workforces assigned to multiple employee worksites, they are permitted, but not required, to name a specific employee to be the assigned alternate to the department head for purposes of this administrative regulation. The name of the employee filling this role must be provided to the City Manager's Office, Finance and Personnel Departments.

Travelers must file all travel documents – requests, expenses, cash advances, final reports – with their assigned department (the department that directly pays the employee or elected official's salary). Board and commission members and volunteers must file their travel documents with the sponsoring department. All travel expenses paid for with City funds will be charged to the traveler's assigned department.

Additional approvals may be required depending on the total cost and location of the event as specified below.

- All travel outside the continental United States requires the City Manager's approval. This includes travel to Alaska, Hawaii, Puerto Rico, Guam and any foreign country.
- All travel for which the total cost per person (estimated and/or actual) is above \$4,000 requires the City Manager's approval.
- All travel for which the total cost per person (estimated and/or actual) is above \$2,000 requires the approval of the City Manager or designee.
- All unbudgeted travel requires the approval of the City Manager or designee. Departments that become aware of the need for multiple unbudgeted trips can submit a memo to the City Manager or designee asking for approval for all such trips. The reason for these trips must be clearly explained, cost estimates must be provided, and a travel authorization form must be completed for each trip at the time of travel.
- When the City Manager is out of town, or otherwise unavailable, the Assistant City Manager can provide necessary approvals in his place.
- All travel requiring the City Manager or his designee's approval must be accompanied by a memo specifying the circumstances requiring such an approval.

Travel Authorization Form(s) – City Funded Travel

- Attendance at training or other professional development events which occur within Maricopa County, for which only registration costs are incurred, is not considered "travel." The authorization and reimbursement form for these events is the "In-county Registration form." The Business Travel, Conference and Out-of-county Training form should not be used.
- Events outside Maricopa County are considered "travel" and require the Business Travel, Conference and Out-of-county Training form.

- All employees traveling on "City Business" or "City Authorized Education" time, and all other travelers must complete a Business Travel, Conference and Out-of-county Training form regardless of funding source. This includes travel funded with Management Development and/or Employee Development funds.
- The proper form(s) must be completed with all appropriate expense estimates and all required signatures prior to the travel taking place. A complete conference agenda or full description of the training program must be attached.
- The same manager(s) that approved the travel prior to its taking place must also review and approve the completed Business Travel, Conference and Out-of-county Training form upon the traveler's return.

Department Travel Budgets

Departments will be provided an annual budget for business travel, conferences and training based upon their unique requirements. Throughout the year departments should monitor their travel and training expenditures to ensure that approved allocations are not exceeded. If the budgeted allocation has been spent, and additional travel is necessary, authorization by the City Manager or his designee is required. The memo requesting authorization to exceed the travel budget must also specify where available funding exists. If additional travel is approved by the City Manager or designee a Budget Adjustment form must be submitted to Budget and Research. Carrying over or encumbering unused travel funds is not permitted.

Non-City Funded Travel

Business travel, conferences or training funded with non-City resources for any part of the total cost also require City Manager or designee approvals. Non-City resources include any funds that do not flow through the City's SAP accounting system; this includes travel paid for by vendors or professional organizations such as IPMA or ICMA. For purposes of this AR, "vendor" is defined as any individual or organization whose primary business is to sell goods or services.

If non-City resources pay all costs the Business Travel, Conference and Out-of-county Training form is not required. However, a memo with the City Manager or designee approval must be attached to the employee's leave slip. The employee's department must also retain a copy of the memo in case questions arise about the trip. For those travelers not required to submit a leave slip, a memo with City Manager or designee approval must be retained by their assigned department.

Employees, elected officials, board and commission members and/or volunteers attending a local, in-county training session or event sponsored by another government agency (e.g. City of Glendale, FBI) or one of the City's employee groups (e.g. ASPTEA, PLEA) do not need City Manager or designee approval. For these in-county, no-cost training sessions where City Business or Education time is used, only a leave slip with the proper signatures is required.

Non-exempt Employees

If non-exempt employees are conducting business travel or attending a conference or training, departments may need to discuss the potential for overtime pay with the Personnel Department. Overtime costs must be considered when estimating the total travel costs.

Estimated Expenses

The Business Travel, Conference and Out-of-county Training form requires that the purpose of the event, destination, the beginning and ending dates of the official leave, and an estimate of costs be provided prior to travel commencing.

The final approving authority will review all estimated expenses for reasonableness. Approved limits for hotel costs are provided in the City's Lodging Rate Schedule, <http://inphx:8000/FINANCE/TRAVEL/index.html>. Approved limits for meals are limited to the U.S. General Services Administration (GSA) daily amounts for the destination city (available at www.gsa.gov). Also, lodging and meal expenses may exceed the City's Lodging Rate Schedule and/or the GSA daily maximum when packaged as part of an approved conference or training session. Refer to the "Expenses Eligible for Reimbursement" section. Estimates for tips are limited to 20% for taxis, and a combined \$5 per day for baggage handling/maid service.

Pre-payment of Airfare, Registration and Lodging

Generally, the Finance Department will pay airfare and/or registration fees, including conference-sponsored meals directly to the travel agency, conference or training vendor. However, in order to maximize savings to the City, travelers may elect to pay airfare, registration and/or lodging expenses directly and be reimbursed. Often less expensive airline and lodging rates are available online and require payment at time of reservation. Many conference registrations are also available online. However, keep in mind that travel expenses for many departments are the only opportunity to use M/W/SBE companies for purchasing. Check with your department before making any reservations online.

To receive reimbursement for these expenses prior to traveling, submit the receipt, Payment Control Document (PCD) and the approved Business Travel, Conference and Out-of-county Training form to the Finance Department.

Post-travel Requirements

Within five business days upon return from the event, the traveler must finalize the Business Travel, Conference and Out-of-county Training form and forward it to the traveler's department fiscal staff. The department then has five business days to submit the form, verifying attendance and reporting any additional actual expenses, to the Finance Department.

Event Cancellation

In the event that the meeting, training or conference is cancelled and the traveler has been reimbursed, the traveler is responsible for returning the funds received to the City.

Cash Advance Payments

If, in the judgment of the approving authority, the estimated expense for an event is too high to expect the traveler to finance it and receive reimbursement upon return, a cash advance payment of the estimated amount may be made to the traveler. This advance may include meals, ground transportation and lodging expenditures. Whenever possible, the Finance Department will pay

airfare and/or registration fees, including conference-sponsored meals, directly to the travel agency, conference or training vendor.

Cash advance payments are not permitted for executives and middle managers. All other employees, elected officials, board and commission members or volunteers are eligible for cash advance payments. No cash advance payments will be made without a payment request and the Business Travel, Conference and Out-of-county Training form properly completed with all required approvals.

After receiving approval to attend a business meeting, conference or training event, the department should execute a PCD for the amount of the advance and submit it with the approved Business Travel, Conference and Out-of-county Training form to the Finance Department at least seven business days before the check is needed. The Finance Department will not release a cash advance more than five business days before the departure date, unless specifically authorized by the City Manager or designee.

Reimbursement procedures, described later in this AR, also apply to cash advance payments. Justification and approval of expenditures are necessary. A cash advance does not constitute final approval for expenses. Unused portions must be returned. Also, cash advances, under certain circumstances, are taxable under the IRS code.

Expenses Ineligible for Reimbursement

Items specifically prohibited from reimbursement include:

- Alcoholic Beverages.
- Personal Items – including, but not limited to, toiletries, laundry/dry cleaning not meeting the requirements listed below, mini-bar purchases, snacks and vending machine purchases.
- Entertainment – including, but not limited to, in-room movies and recreational activities arranged by a conference or training provider (e.g. golf or museum tours).
- Personal telephone and/or Internet use.
- Non-City Traveler Expenses – pre-payments and/or reimbursements for expenses associated with members of the traveler's family who accompany the traveler.
- Travel Insurance.

Expenses Eligible for Reimbursement

The following list of expense classifications is for information to determine allowable reimbursements under this regulation. The list is a guide and is not all-inclusive. The City Manager or designee has discretion to approve other expenses in unusual circumstances.

Travelers should demonstrate good judgment in the matter of business expenses and have proper regard for economy when conducting business away from the City.

- Registration – fees charged for registration at appropriate training events, conferences, or meetings are allowable expenses. A receipt or some other proof of the fee and a copy of the conference or training program documenting the fees and included meals must be provided with the Business Travel, Conference and Out-of-county Training form.

- Transportation – receipts for transportation expenditures must be maintained and submitted for reimbursement. No allowances will be made in excess of the actual cost of transportation.
 - Air Transportation – economy or discount airline rates are standard transportation costs for out-of-state events.
 - Ground Transportation at Travel Destination – expenses for ground transportation at the travel destination (taxis, cars for hire, shuttles or subways/trains) are reimbursable when traveling by air, rail, or bus. However, mileage for personal vehicle use or taxi expenses between home and Phoenix Sky Harbor International Airport are not reimbursable expenses.
 - Use of Personal Vehicle – for the traveler's safety, the use of personal vehicles for out-of-state business meetings, conferences, or training is discouraged. However, the approving authority may authorize the use of personal vehicles when use of commercial transportation or City vehicles is not available or is not practical.

Reimbursement for use of a personal vehicle is limited to the current per mile rate authorized by the Internal Revenue Service, and will not be more than the cost of an economy airfare to the same out-of-state destination. In estimating the cost of using a personal vehicle, parking at the destination city must be included. Travelers must receive prior approval from their department to use personal vehicles on City business. Travelers receiving a monthly transportation allowance will not be reimbursed for in-county business use of their personal vehicle.

- Rental Vehicles – rental vehicles are to be authorized only when their use is less expensive than using taxis, cars for hire, shuttles or subways/trains. In estimating the cost of a rental vehicle, parking at the destination city must also be included. Exceptions to this policy can be approved by the traveler's department head and must be requested prior to any travel.

When renting a car on City business, travelers should name the City of Phoenix as the lessee. Additional insurance coverage, in particular, "collision damage waivers," should not be purchased since the City's Self-Insurance Program provides liability coverage for accidents in the course and scope of employment. Additionally, it provides coverage for damage to the rental vehicle while in the care, custody or control of the City traveler. The City will not reimburse expenses for additional insurance coverage acquired from the car rental company.

- City Vehicle – a notation on the expense report should note that a "City vehicle" was used. Any expenses involved (i.e. gas or emergency repairs) are reimbursable only with receipts. AR 6.11 cites the regulations concerning the use of City-owned vehicles on City business.
- Airport Parking – the City will reimburse airport parking charges up to \$10 per travel day regardless of parking facility used – OR – usage of Super Shuttle (or similar provider) will be reimbursed up to the equivalent of \$10 per travel day. Mileage travel to and from Phoenix Sky Harbor International Airport is not reimbursable.

- Lodging – reimbursement for hotel accommodations is limited to the City's Lodging Rate Schedule amounts, plus taxes and gratuities, for the destination city. City Lodging Rate schedules (<http://inphx:8000/FINANCE/TRAVEL/index.html>) have been prepared for locations within the U.S. and internationally. Departments that know they will be sending travelers several times to the same destination are encouraged to negotiate with a hotel in the destination city for better rates. The number of lodging nights eligible for reimbursement cannot exceed the number of days of scheduled training, business meetings or conference educational content plus one day.

When lodging is part of the conference or training package, room rates in excess of the City's Lodging Rate Schedule are authorized. For safety reasons, travelers are encouraged to stay at the conference or training host hotel. When accompanied by a spouse or family member, the City will reimburse the single room rate for lodging. The traveler is responsible for the difference in the rates. Overnight lodging for in-state activities outside Maricopa County is authorized if there is a scheduled evening event.

- Meals – reimbursement for meals, including taxes and gratuities, is limited to the daily GSA amount for the destination city, and receipts are required. Meals prepaid by the City and included in the event registration fees can exceed GSA amounts. However, any time meals have been prepaid by the City (excluding continental breakfasts); alternative meals will not be reimbursed (with the exception of those needed due to dietary restrictions). Alcoholic beverage expenses are not reimbursable. The number of days meals are eligible for reimbursement equals the number of days of scheduled training, business meetings or conference educational content plus one day. For training and conference events within the Phoenix Metro area, meal expenses not included as part of the conference or training program are not reimbursable.

Itemized receipts are not required; however, travelers are strongly encouraged to obtain and provide itemized receipts for reimbursement. Itemized receipts clearly show that unauthorized expenses, such as alcohol, are not being requested for reimbursement.

- Dry cleaning and laundry – costs for dry cleaning or laundry expenses incurred on trips of at least eight days are eligible for reimbursement *on or after the fifth day of travel*. Receipts are required. No dry cleaning or laundry expenses incurred within the first four days of travel will be reimbursed.
- Gratuities – up to 20% is authorized for meals and taxis. Baggage handling and/or maid service are authorized up to a combined \$5 per day. Receipts for taxi, baggage handling and/or maid service gratuities are not required. However, tips not paid must not be submitted for reimbursement. Daily GSA meal amount limits include taxes and gratuities.
- Telephone and Internet Use – travelers should use good judgment when making long distance business calls or using the Internet while away on City business. For example, it may be less expensive to use a personal cell phone rather than the hotel phone. Travelers should also be aware of cheaper rate hours and call during those times if possible. As noted earlier, only business-related use of the Internet is reimbursable.

- Upgrades – travelers may upgrade meals, lodging and/or airfare at their own expense. The base amount eligible for reimbursement by the City and the separate upgraded amounts paid by the traveler must be clearly shown. In addition, information explaining how the base amount was determined must be included.
- International Exchange Rates – the traveler should attempt to document the exchange rate paid through credit card receipts. If that isn't possible then a default source for exchange rates, such as www.x-rates.com or www.oanda.com should be used.

Reporting Business, Training or Conference Expenses

The expense portion of the Business Travel, Conference and Out-of-county Training form shall be filed with the Finance Department no later than ten business days after returning to work for either (a) reimbursement of expenditures or (b) settlement of a business meeting, training or conference expense pre-payment or cash advance. This includes documentation of expenses day by day. Attach expense receipts to the Business Travel, Conference and Out-of-county Training form as documentation.

If a receipt for a minor expense, such as parking or a meal, is lost the traveler may submit an affidavit along with their Business Travel, Conference and Out-of-county Training form to the Finance Department. The affidavit must indicate which specific expense does not have a receipt, and must be signed by the traveler's department head. Duplicate receipts can be obtained for hotel, air transportation and car rental expenses so, generally, affidavits will not be accepted for these items. It is expected that the affidavit method will be the exception, and Finance will ensure it is not misused. Receipts are not required for baggage handling, maid service or taxi gratuities.

The approving authority will be responsible for the timely completion and submission of authorization forms for subordinates. The approving authority will check the final expense report statement for reasonableness and compare actual lodging and meal expenses to the City's Lodging Rate Schedule and the GSA daily meal amounts for the destination city. No reimbursement will be made or account settled until proper approvals have been received. Generally, expenses for lodging above the City's Lodging Rate Schedule and meals above the daily GSA amount will not be reimbursed. Exceptions include lodging at the conference hotel, and meals sponsored by the conference. If expenses exceed the budgeted amount allowed for the event, approval must be obtained from the City Manager or designee. After all applicable approvals have been obtained; the report should be submitted to the Finance Department.

The Finance Department will review the expenses and receipts, check accuracy and general reasonableness, check for proper approvals, and process the final expense report for payment. The Finance Department will report submissions that do not conform to this AR to the appropriate department. The Finance Department is not responsible for making corrections.

Settlement of Cash Advance Payments

If a traveler accepted a cash advance, a settlement must be made based on actual expenses paid. If actual expenses are less than the estimated amount, the traveler will write a check payable to the City of Phoenix for the unused balance and submit it with the Business Travel, Conference and Out-of-county Training form. This repayment must be made within ten business days of returning to work.

If actual expenses exceed the estimate, with appropriate approvals, the City will reimburse the traveler.

Again, cash advance payments do not constitute approval to spend the entire amount advanced. All actual expenditures must be justified, meet the requirements of this AR and be accompanied by receipts. Normally, reimbursements occur within five business days after the Finance Department receives and approves the expense report and hardcopy PCD.

Reimbursement by an Outside Agency

When authorization for an event is secured on the basis of reimbursement of expenses to the City by an outside agency, the department shall be responsible for indicating this fact on the Business Travel, Conference and Out-of-county Training form and also for obtaining reimbursement and applicable supporting documentation. The Finance Department shall be responsible for monitoring the receipt of such reimbursements to maintain an adequate audit trail of the transaction.

Violations of this Administrative Regulation

- Travelers and/or the approving manager may be disciplined for violating this AR.
- Departments that have significant or repeated violations of travel regulations will be placed on travel probation and will have the travel budget for the department reduced or eliminated.

Interpretations of this Administrative Regulation

The Finance and Budget and Research Directors will confer and resolve any issues related to administering or interpreting this AR.

Exceptions for Special Circumstances or Needs

The City Manager may grant specific exceptions or make modifications to the provisions of this AR for a specific travel event, when, in his judgment, it is in the best interest of the City to do so. This includes employees who request reasonable accommodation due to a disability, exceptions due to unique safety concerns and other exceptional employee circumstances. Such exceptions or modifications will be in writing and attached to all other travel forms required in this AR. Exceptions and modifications will apply on a case-by-case basis only. Any other exceptions or modifications will require a revision to this AR.

Frank Fairbanks, City Manager



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**EXHIBIT D
STAFFING PLAN**

**to be replaced with proposed Staffing Plan
prior to execution of Agreement**

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**EXHIBIT E
INSURANCE REQUIREMENTS**

Consultant and its subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Consultant from liabilities that might arise out of the performance of the work under this Agreement by Consultant, its agents, representatives, employees or subcontractors and Consultant is free to purchase additional insurance as may be determined necessary.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Consultant shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- | | |
|---|-------------|
| • General Aggregate | \$2,000,000 |
| • Products – Completed Operations Aggregate | \$1,000,000 |
| • Personal and Advertising Injury | \$1,000,000 |
| • Each Occurrence | \$1,000,000 |

- a. The policy shall be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of Consultant."

2. Automobile Liability

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

- | | |
|-------------------------------|-------------|
| • Combined Single Limit (CSL) | \$1,000,000 |
|-------------------------------|-------------|

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The policy shall be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of Consultant, including automobiles owned, leased, hired or borrowed by Consultant."

3. Worker's Compensation and Employers' Liability

Worker's Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the City of Phoenix.
- b. This requirement shall not apply when a consultant or subcontractor is exempt under A.R.S. 23-901, **AND** when such consultant or subcontractor executes the appropriate sole proprietor waiver form.

4. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this Agreement.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix shall be an additional insured to the full limits of liability purchased by Consultant even if those limits of liability are in excess of those required by this Agreement.
2. Consultant's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

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- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days' prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days' prior notice may be given. Such notice shall be sent directly to:

Alice Stallings
Contract Administrator
City of Phoenix Aviation Department
3400 East Sky Harbor Boulevard, Suite 3300
Phoenix, AZ 85034-4405

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

- E. **VERIFICATION OF COVERAGE:** Consultant shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Agreement shall be sent directly to:

Alice Stallings
Contract Administrator
City of Phoenix Aviation Department
3400 East Sky Harbor Boulevard, Suite 3300
Phoenix, AZ 85034-4405

The City project/agreement number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

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- F. SUBCONTRACTORS:** Consultant's certificate(s) shall include all subcontractors as additional insureds under its policies **or** Consultant shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. APPROVAL:** Any modification or variation from the insurance requirements in this Agreement shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

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**EXHIBIT F
LETTER OF CREDIT FORM**

[BANK]
IRREVOCABLE STANDBY LETTER OF CREDIT
NO. _____

To: City of Phoenix – Beneficiary
Aviation Department
Financial Management Division
3400 East Sky Harbor Boulevard, Suite 3300
Phoenix, Arizona 85034-4405

Applicant: Company Name

Amount: \$ xxx.xx

Expiration Date: mm/dd/yyyy

We hereby establish our irrevocable Standby Letter of Credit No. _____ in your favor available against sight drafts drawn on (name of bank) at the office of the undersigned located at (address of bank in Phoenix Metro Area, Arizona), accompanied by the following documents:

1. A certificate purportedly signed by the Aviation Director, or his or her designee, stating one or more of the following:

A. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. _____ as Company Name has failed to perform its obligations under/failed to comply with their Agreement No. _____ and the City requires payment under this Standby Letter of Credit of \$ _____.

B. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. _____ as Company Name has failed to provide a replacement letter of credit prior to sixty (60) days before the expiration date as required by Agreement No. _____.

C. The City of Phoenix has received notice from (name of bank) that the Standby Letter of Credit No. _____ will not be extended.

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2. This original Standby Letter of Credit for endorsement.

Partial and multiple drawings are permitted under this Standby Letter of Credit.

This Standby Letter of Credit will automatically be renewed for a one (1) year period from the Expiration Date set forth above and upon each anniversary of such Expiration Date, unless at least thirty (60) days prior to such expiration, or prior to any anniversary of such expiration, we notify both Beneficiary and Applicant in writing by registered mail that we elect not to renew this Standby Letter of Credit.

All documents are to be forwarded to us by mail, overnight courier, or hand delivered to our counters.

Documents to be directed to: (Address of Bank)_____.

Drawings may also be presented to us via telefacsimile to our telefacsimile no. () insert - bank's fax number (each such drawing, a "Fax Drawing") provided, however, that you confirm our receipt of any Fax Drawing by telephone to our telephone no. () insert - bank's telephone number.

If Beneficiary presents an improper drawing, notice will be sent by telefacsimile to (602) 273 – 4083 and by overnight mail delivery.

After confirmation of proper Fax Drawing documents submitted by Beneficiary, then Beneficiary will provide the original of the sight draft and the original of this Standby Letter of Credit for our endorsement on this Standby Letter of Credit for our payment of such draft and the original Standby Letter of Credit will be returned to Beneficiary at your address via overnight courier unless it is fully utilized.

We hereby agree that this Standby Letter of Credit shall be duly honored upon presentation and delivery of the certification specified above.

This Standby Letter of Credit is subject to the "International Standby Practices (ISP98)," International Chamber of Commerce Publication No. 590, and, as to matters not governed by ISP98, shall be governed by and construed in accordance with the laws of Arizona, without regard to principles of conflicts of law.

[Bank]

By: _____
Authorized Signature

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**EXHIBIT G
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
NEGOTIATED CONTRACT CLAUSE**

APPLICABILITY – *For the purposes of this contract clause, a “Negotiated Contract” is a contract that is procured through a Qualifications-Based Selection (QBS) process, such as a Request for Qualifications. These types of procurements include: Engineering services, Architectural services, One-Step Job Order Contracting, Two-Step Job Order Contracting, One-Step Design-Build, and Construction Manager at Risk. This contract clause shall be included in both the solicitation and contract documents for these projects.*

SECTION I. DEFINITIONS

Arizona Unified Certification Program (AZUCP) means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 CFR Part 26. The official DBE database containing eligible DBE firms certified by the AZUCP can be accessed at: <http://www.azdbe.org>.

Broker, Packager, Manufacturers’ Representative, or Jobber means a firm that is not a manufacturer or regular dealer as defined herein.

Commercially Useful Function means that a DBE firm is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. A DBE must perform at least 30 percent of the total cost of its contract with its own work force in order to be determined to be performing a commercially useful function on the contract.

Contract is a written agreement obligating the seller or business enterprise to furnish goods or services as submitted and the Purchaser or Buyer to pay for such goods or services.

DBE Joint Venture is an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. One participant in the joint venture arrangement must hold DBE status with the City or AZUCP. The joint venture is limited in scope and duration to this contract, the resources, assets and labor of the participants must be combined in an effort to accrue profit.

Disadvantaged Business Enterprise (DBE) means a small business concern that has successfully completed the DBE certification process and been granted DBE status by the City’s Equal Opportunity Department (EOD) or another member of the Arizona Unified Certification Program (AZUCP) pursuant to the criteria contained in 49 Code of Federal Regulation (CFR) Part 26.

Economically Disadvantaged Individuals means those individuals who have a personal net worth of less than \$750,000, not including the value of their equity interest in their personal residence or the value of their ownership interest in the firm seeking certification as a DBE.

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Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract.

Purchaser for purposes of this contract means the City.

Regular Dealer or Supplier means a business that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

Small Business Concern means a small business with gross receipts or number of employees consistent with the U. S. Small Business Administration's definition of a small business, subject to further limitations as defined in 49 CFR Part 26.

Socially Disadvantaged Individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Membership in one of the above mentioned groups does not qualify the firm to be considered a DBE for purposes of this contract. Only firms that have completed a DBE certification process and been granted DBE status by the City or AZUCP shall be considered socially and economically disadvantaged individuals for purposes of this contract.

Subcontract is a contract at any tier below the prime contract, including purchase orders.

Subcontractor is an individual, partnership, joint venture, corporation or firm that holds a contract at any tier below the prime contract, including purchase orders.

Submitter is an individual, partnership, joint venture, corporation or firm submitting a submittal to the City to perform services requested by a solicitation or procurement. The submittal may be direct or through an authorized representative.

Successful Submitter is a Submitter who has been selected to perform services requested by a solicitation or procurement.

SECTION II. GENERAL REQUIREMENTS

- A. **For this contract, the City has established a DBE participation goal of not less than 8.95% of the contract dollar amount.** In determining if a Submitter has met this requirement, rounding up of proposed DBE subcontract amounts shall not be allowed.
- B. The Successful Submitter agrees to meet the DBE goal established for this contract by making opportunities available for DBE firms to participate in the work of the contract.
- C. **Certification Requirement** - ONLY firms certified by the City of Phoenix or another member of the AZUCP are eligible to fulfill the DBE subcontracting goal established for the contract.

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- D. **DBE Scopes of Work** - The eligible DBE firms, their scopes of work, and their proposed contract amounts listed in the submittal to fulfill the DBE requirements of the contract must not be removed or replaced, changed or reduced without prior written approval of the City of Phoenix Equal Opportunity Department (EOD).
- E. **Nondiscrimination Clause** - The City, as a recipient of federal U.S. Department of Transportation (USDOT) funding, has agreed to abide by the assurance found in 49 CFR Part 26.13(a). As a condition of this agreement, the City shall require each contract signed by the City with the Successful Submitter, and each subcontract signed by the Successful Submitter with a Subcontractor, to include the following assurance:

“The contractor, subcontractor, or subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Par 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract and/or any other such remedy as the City deems appropriate.”

Note: For the purposes of the required contract and subcontract language above, the Successful Submitter is the “contractor”, and the City is the “subrecipient.”

SECTION III. SUBMITTAL REQUIREMENTS

- A. 1. **Responsiveness to DBE Requirements at Time of Submittal** - Any Submitter wishing to remain in competition for contract award shall provide the minimum required DBE information due **at time of submittal**. This minimum requirement is the submission of **Attachments A and B** as detailed in Part C below. Failure to submit the DBE program documentation in a timely manner as herein set forth will result in a determination by the City that the Submitter is non-responsive to the DBE requirements.
2. **Responsiveness to DBE Requirements Prior to Contract Award** – Following the solicitation submittal and completion of the selection process, the Successful Submitter shall provide all additional required DBE validating information **once contract negotiations with the City of Phoenix have been completed and prior to contract award**. This required information is the submission of **Attachment C, Attachment D, and Attachment E**. *This requirement does not apply to job order contracting services procurements.*
3. **JOB ORDER CONTRACTING SERVICES ONLY - Responsiveness to DBE Requirements After Contract Award** – Job order contracting services are provided by the Successful Submitter on an as-needed basis. Therefore, the Successful Submitter shall provide additional required DBE validating information as project work is negotiated and issued against the job order contract. These requirements are detailed in Section VI of this clause.

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- B. **Submittal Format** - All required DBE information due at time of submittal should be submitted in a separate sealed envelope with the submittal. The remaining required DBE information due prior to contract award should be submitted as a completed package with the Successful Submitter's final negotiated proposal.
- C. **Forms & Documentation** - Submitters must submit the following documentation in the form prescribed by the City. For purposes of this requirement, other documentation that may, on its face, provide the same information contained on the required forms shall not be sufficient to meet this requirement.

Due at Time of Submittal:

1. A ***Proposed DBE Participation*** form with proposed DBE participation percentage for the required scope of services based on the solicitation documents. **(Attachment A)**
2. A **Subconsultant/Subcontractor/Supplier Contact List** of all subcontractors contacted by the Successful Submitter in the preparation of its submittal, that includes the name and addresses of the companies and the scopes of work for which they were solicited. **(Attachment B)**

Due Prior To Contract Award:

3. A ***Letter of Intent to Perform as a Subcontractor/Supplier*** completed and signed by each DBE firm that will perform on the contract and whose participation will be counted towards meeting the DBE utilization goal. **(Attachments C & C2)**
 4. A ***Proposed DBE Participation*** form completed and signed by the Successful Submitter that lists all DBE firms that will perform on the contract and whose participation is being used to meet the DBE goal requirements of the submittal. **(Attachment D)**
 5. A **Subconsultant/Subcontractor/Supplier Contact List** of all subcontractors contacted by the Successful Submitter to solicit proposals for work on the contract, that includes the name and addresses of the companies and the scopes of work for which they were solicited. **(Attachment E)**
- D. **Waiver** - Submitters **failing** to identify DBE participation that is equal to, or greater than, the DBE utilization goal cited in Section II (A) of this document, shall, **as a matter of responsiveness**, petition for full or partial relief from the portion of the requirement that has not been met in its submittal. The Successful Submitter shall follow the same process for full or partial relief from the portion of the requirement that has not been met in its negotiated proposal.

The petition for relief and all required supporting documentation shall be provided **at the time set for submittal of DBE documents as required and set forth in Part A above**. The petition for relief must state the specific portion of the goal for which relief is requested and must be in affidavit format, duly signed by an authorized representative of the Submitter or the Successful Submitter.

The petition for relief **does not** relieve the Submitter from the requirement to submit the documentation listed in Part A of this section (Attachments A and B) with its submittal for that portion of the DBE goal that will be met.

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Additionally, the petition for relief **does not** relieve the Successful Submitter from the requirement to submit the documentation listed in Part A of this section (Attachments C, D, and E) with its negotiated proposal for that portion of the DBE goal that will be met.

- E. **Good Faith Effort** - A petition for relief shall include all reasonable good faith efforts made by the Submitter or Successful Submitter towards fulfilling the DBE requirement. Mere *pro-forma efforts* will not be regarded as satisfying the requirements of good faith. The actions taken to meet the good faith requirements must be substantiated by written documentation and proof.

The following factors, as set forth in 49 CFR part 26, are illustrative of matters EOD will consider in judging whether good faith efforts were made:

1. Whether the Submitter or Successful Submitter attended pre-submittal or pre-solicitation meetings that were held by the City. The City will verify attendance through a sign-in log maintained for each such meeting.
2. Whether the Submitter or Successful Submitter advertised in general-circulation trade association and DBE-focused media concerning the subcontracting opportunities.
3. Whether the Submitter or Successful Submitter solicited interest from a reasonable number of DBE firms. The notices should be in written format and should show that sufficient time was allowed for DBEs to participate effectively.
4. Whether the Submitter or Successful Submitter selected portions of the work to be performed by DBEs to increase the likelihood of meeting the DBE goals. This includes, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation.
5. Whether the Submitter or Successful Submitter negotiated in good faith with interested DBEs and did not reject a DBE's submittal as unqualified without sound reasons.
6. Whether the Submitter or Successful Submitter made efforts to assist interested DBEs in obtaining required bonding, lines of credit, or any insurance.
7. Whether the Submitter or Successful Submitter effectively used the services of available DBE community organizations, contractor groups, local, state, and federal assistance offices, and other organizations that provide services to or for the benefit of DBEs.

- F. **Direct negotiations with DBEs** - For a petition of relief, in instances where direct negotiations with DBEs has occurred, the actions taken must be reported in such a fashion as to include:

1. A detailed statement of the efforts made to negotiate with DBEs including, at a minimum, the names, addresses, and telephone numbers of DBEs contacted and the date(s) of the contact.
2. A description of the plans and specification information provided to DBEs regarding the portion of work to be performed.
3. A detailed statement of the reasons why an agreement was not reached with the DBEs.
4. An explanation of the efforts made to select portions of the work to be performed by DBEs in order to increase the likelihood of achieving the stated goal.

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5. For each DBE contacted that is subsequently considered to be unavailable, the Successful Submitter must submit a statement of unavailability signed by the DBE, or if one cannot be obtained, a statement from the Successful Submitter that includes the reasons why the DBE was considered unavailable.

- G. **Waiver Consideration** – When a full or partial Waiver is requested, EOD will consider all evidence provided by the Submitter in the submittal packet, or the Successful Submitter in the proposal packet. A department representative may request to meet with the Submitter or Successful Submitter for purposes of obtaining clarification on the information being reviewed.

EOD will make a determination, in writing, of the Submitter's or Successful Submitter's demonstration of good faith. If a determination is made that the Submitter failed to meet the good faith requirements, the City shall consider the submittal as non-responsive. Notice shall be sent, in writing, in instances where the Submitter is found to have been non-responsive. In the case of a Waiver from the Successful Submitter, if a determination is made that the Successful Submitter failed to meet the good faith requirements, the City shall not proceed with award of the contract. The Successful Submitter will be required to revisit its utilization efforts in order for the City to proceed with award of the contract.

- H. **Administrative Reconsideration** – If the City determines the Submitter failed to meet the good faith effort requirements, an opportunity for reconsideration of this determination will be provided prior to awarding the contract to the Successful Submitter.

If a Submitter wishes to request reconsideration of the determination of non-responsiveness based on insufficient good faith efforts, written notice must be submitted to the City within three days of the City's non-responsive notification to the Submitter. As all relevant evidence and documentation were required at the time of submittal, no additional evidence or documentation of good faith efforts will be considered in the reconsideration process. The request for reconsideration should be made to:

City of Phoenix Equal Opportunity Department
Business Relations Division-Contract Compliance Section
251 West Washington Street, Seventh Floor
Phoenix, AZ 85003

SECTION IV. POST-AWARD GENERAL REQUIREMENTS

- A. **DBE Subcontracting Obligation** – The Successful Submitter receiving award of the contract shall enter into a subcontract with each approved DBE firm listed in its submittal. Each subcontract shall be for the scope of work and amount stated in the submittal and/or proposal documents. DBE subcontracts shall not be terminated, nor shall the scope of work be altered, without written approval of EOD. The amount of the subcontract shall also not be revised to a lower amount than was stated in the submittal and/or proposal documents without prior written approval of EOD. Any petition to alter the original committed subcontract with a DBE must be submitted in writing to EOD prior to such change occurring. Failure to do so may result in the Successful Submitter being declared in breach of the contract.

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- B. **DBE Substitutions** – The Successful Submitter must notify EOD in writing of the necessity to substitute a DBE in order to fulfill the DBE requirements. Actual substitution or replacement of a DBE must not occur before EOD's written approval is obtained. The request must provide specific reasons why the substitution or replacement of the DBE is necessary.
- C. **Post-Award Relief From DBE Requirements** – After contract award, no relief from the DBE requirements will be granted except in exceptional circumstances. Requests for relief from any or all of the DBE goal requirements must be in writing to EOD. EOD has the final authority to determine if the request will be granted.

The written request must contain the amount of the relief being sought, the evidence that demonstrates why the relief is necessary, and any additional relevant information to be considered by EOD. All records of the Successful Submitter's attempts to subcontract with the DBE firm and any other actions taken to locate and solicit a replacement DBE must be included with the request.

If an approved DBE allows their DBE status to expire or their DBE certification is removed during the course of the subcontract, the City will consider all work performed by the DBE under the original contract to count towards meeting the DBE goal requirement. No increased scopes of work negotiated after removal/expiration of the DBE firm's certification will be counted nor will any work performed under a contract extension granted by the City be counted towards meeting the DBE goal requirement.

In instances where the subcontractor was approved as a bona fide DBE by the City, and the firm subsequently loses its DBE status prior to the execution of a contract, EOD will consider whether or not good faith efforts were made to find and substitute the firm with a certified DBE. The showing of good faith must be provided in writing to EOD prior to replacing the DBE firm.

SECTION V. POST-AWARD COMPLIANCE REQUIREMENTS

- A. **Attempts to Evade DBE Requirements** – Any firm found to have knowingly engaged or participated in any direct or indirect attempt to evade the DBE requirements of the DBE Contract Clause may be declared ineligible for future contracts with the City that contain federal assistance. The firm may be held liable to the City for any forfeiture of funds or damages caused by delay in the award or performance of the contract resulting from the firm's non-compliance.

If a firm uses, or attempts to use, false, fraudulent, or deceitful statements or representations in order to meet the DBE goal requirement of the contract, the City reserves the right, under the provisions of 49 CFR Part 26.107, to report such actions to the USDOT. The USDOT may, at its discretion, initiate suspension or debarment proceedings against the firm. The City may also pursue all means available to address such unprofessional and unethical behavior.

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- B. **Prompt Payment of Subcontractors** – In accordance with the Arizona Revised Statutes (ARS), Section 34-221(G), the City's solicitation and/or contract documents, the Successful Submitter is required to promptly pay its subcontractors, subconsultants, or suppliers within 7 calendar days of receipt of each progress payment from the City. Any diversion by the Successful Submitter of payments received for work performed on the contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for a declaration of breach of the contract with the City. No contract terms and conditions between the Successful Submitter and its subcontractors, subconsultants, or suppliers may alter the rights of any subcontractor, subconsultant, or supplier to receive prompt and timely payment as provided herein. The prompt payment provisions of 49 CFR Part 26 require the Successful Submitter to promptly return any retention monies to subcontractors or subconsultants at such time as the work of the subcontractor or subconsultant is complete and the City has accepted the work and paid the Successful Submitter for the work performed and accepted. Retention shall be paid no later than 30 days after such payment is issued by the City. Nothing in this section negates the rights of the Successful Submitter to carry out the terms and conditions of its contract with the subcontractor or subconsultant as it relates to monies owed by the subcontractor or subconsultant for late performance, claims, and other conditions that may exist.

- C. **Counting DBE Participation** – DBE subcontracting participation on the contract will be calculated based on that portion (dollar value) of the contract that DBEs actually perform with their own forces, equipment, supplies, etc. This includes the cost of supplies and materials obtained by the DBE for the work on the contract, **except** when supplies and/or equipment is purchased or leased from the Successful Submitter or its affiliate. Any work contracted to the DBE that is performed by the forces of the Successful Submitter or a non-DBE subcontractor to the DBE will not be counted.

The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services may be counted. Fees charged for providing bonds or insurance specifically required for the performance of a DOT-assisted contract may be counted, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

- D. **DBE Performance of a Commercially Useful Function** - The work of a certified DBE may be counted towards attaining the DBE goal of the contract only if the DBE is performing a commercially useful function on the contract. In order to meet this commercially useful function standard, the DBE firm must perform or exercise responsibility for at least **30 percent** of the total cost of its contract with its own workforce.
- E. **Fees and Commissions** - Amounts paid to a firm that does not perform work on the contract with its own forces but rather acts as an agent to arrange such work, materials, or products may not be counted in full towards the DBE goal. Only the fees and commissions retained by the firm may be counted. Examples of instances where only fees and commissions may be counted include, but are not limited to: 1) A DBE that provides uniformed officers for security or traffic control; 2) A DBE firm that owns no trucks but acts as a broker to supply trucking services; 3) A wholesale distributor that

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orders and drop-ships equipment, materials, or supplies on behalf of the Submitter when that firm is not a regular dealer; and, 4) Any DBE firm whose role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain services, materials, equipment, or product. Refer to Attachment A-2, Part 1 for an illustration of how to calculate the portion that will be counted in determining Submitter responsiveness.

- F. **DBE Prime** - A Successful Submitter that has obtained DBE status with the City of Phoenix or another AZUCP member is considered a DBE Prime. A DBE Prime will be credited with DBE participation for that portion of the contract that they themselves perform, only if the DBE prime performs a commercially useful function on that contract. In order to meet the commercially useful function standard, a DBE prime must perform or exercise responsibility for at least **30 percent** of the total cost of its contract with its own workforce. A DBE prime that has not been granted DBE status by the City of Phoenix or AZUCP member cannot count its participation. In addition, any portion of the contract that is subcontracted and performed by an eligible DBE subcontractor may also be counted. **Example:** *If a DBE Prime proposes to perform 60 percent of the contract with the firm's equipment and workforce, and subcontracts 20 percent to a DBE firm and 20 percent to a non-DBE firm, DBE participation will be credited as being 80 percent.*
- G. **DBE /Non-DBE Joint Ventures** - A DBE/non-DBE joint venture, functioning as the Successful Submitter or as a subcontractor on a City project, will be credited with DBE participation on the basis of the percentage of profit accruing to the DBE firm. The DBE participant in the Joint Venture must have been granted DBE status by the City of Phoenix or Arizona Unified Certification Program. **Example:** *A joint venture made up of one DBE and one non-DBE proposes to perform 60 percent of a project quoted at \$400,000. A total of 50 percent of the profits for performing the work will go to the DBE partner in the joint venture. DBE participation will be credited at 30 percent or \$120,000.*
- H. **Lower Tier Non-DBE Participation** - Subcontract dollars paid by a DBE Prime to non-DBE subcontractors will not be considered when determining the percentage of DBE participation on this contract. Amounts subcontracted to a non-DBE by a DBE subcontractor (2nd tier or lower) may not be counted as well.
- I. **DBE Suppliers** – Purchases from DBE suppliers who have been granted DBE status by the City of Phoenix or Arizona Unified Certification Program may be counted towards the goals as follows:
1. **Manufacturers** - Amounts paid to a DBE supplier that manufactures or substantially alters the material or product it supplies will be credited at 100% of the expenditure when determining the percentage of DBE participation.
 2. **Regular Dealer or Supplier** - Purchases from a DBE firm that meet the definition of a regular dealer or supplier as contained herein and such business engages, as its principal business, in the purchase sale, or lease of products being supplied **may be credited towards the DBE goal at sixty percent (60%) of the sale price** when determining the percentage of DBE participation.

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3. Packagers, Brokers, Manufacturers' Representatives, or Jobbers – Purchases from a DBE firm who arranges or expedites transactions only and does not perform as regular dealers or suppliers not as regular dealers **may not be counted in full** when determining DBE participation. **Only the fees or commissions charged** in the procurement of the materials or supplies, or fees/transportation charges for the delivery of the materials or supplies, may be credited towards achievement of the DBE goal.
- J. **Record Requirements** – During the performance of the work of the contract, the Successful Submitter shall keep such records as are necessary to determine its compliance with the DBE requirements. The records are to be provided to EOD within 72 hours of notification by the City that the records are required. These records include, but may not be limited to:
1. A complete listing of all DBE and non-DBE firms on the project.
 2. The scopes of work being performed by each subcontractor.
 3. The dollar value of all subcontracting work, services, and procurements.
- K. **Notification of Change** – The Successful Submitter shall notify EOD at any time during the contract if it is anticipated that the DBE goal requirements will not be met. This may occur due to changes in the scopes of work required by the City that would affect the participation of a DBE firm. EOD will work with the contractor to identify additional areas where DBE participation could be obtained.

SECTION VI. POST-AWARD REPORTING REQUIREMENTS

- A. **Job Order Contracting Services ONLY** – Job Order Contracting (JOC) services are issued to the Successful Submitter on an as-needed basis throughout the duration of contract. Multiple individual projects called Job Order Agreements (JOA) are typically issued to the Successful Submitter. With each JOA, the Successful Submitter shall provide all additional required DBE validating information **once JOA negotiations with the City of Phoenix have been completed and prior to execution of the JOA**. This required information is the submission of **Attachment C, Attachment D, and Attachment E for each JOA**.
- B. **Subcontracts** – The Successful Submitter shall enter into a subcontracting arrangement with each DBE firm listed on Attachment D of proposal. Copies of all executed DBE subcontracts shall be submitted to EOD as a matter of compliance. Contracts must be submitted prior to the commencement of work by the DBE firm in order for the work being performed to be counted towards the established DBE goal requirement.
- C. **Timely Reporting** - During the course of the contract, the Successful Submitter will submit all required DBE reports in an accurate and timely manner. Reports shall be in such form, manner, and content as prescribed by the City. These reports shall be submitted with each Request for Payment submitted by the Successful Submitter to the City. **(Attachment F and other such reports as prescribed by the City)**

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- D. **Close-Out Reporting** - Upon completion of the contract, the Successful Submitter shall submit a "Certification of Payment to DBE (**Attachment G**) and "DBE Subcontracting/Subconsultant/Procurement" list (**Attachment H**) to EOD. These forms are to be completed and signed by a duly authorized agent of the Successful Submitter and all DBE firms must verify they have received payment in full from the Successful Submitter on the "Certification of Payment to DBE" form noted above.

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ATTACHMENT C

**LETTER OF INTENT TO PERFORM AS A SUBCONSULTANT/SUBCONTRACTOR/SUPPLIER
(TO BE COMPLETED BY THE DBE FIRM – DUE PRIOR TO CONTRACT AWARD)**

PROJECT DESCRIPTION:

PROJECT NUMBER:

TO: _____
(Insert name of Successful Submitter)

1. The undersigned herein attests that they hold certification as a Disadvantaged Business Enterprise (DBE) granted by the following member of the Arizona Unified Certification Program:

(Please note that certification as a Minority, Woman, or Small Business Enterprise (M/W/SBE) does not meet the requirements for bidding on this project as a DBE. Firms must be DBE certified and listed on the directory of certified DBE firms maintained by the Arizona Department of Transportation at www.AZDBE.org to be eligible for consideration as a DBE)

2. The undersigned is prepared to perform the following scope(s) of work on the above referenced project:

COMPLETE THIS PORTION IF SCOPE OF WORK IS BID BY UNIT PRICE OR HOURLY RATE (TRUCKING, HAULING, UNIFORMED OFFICERS, ETC.)			
Description	Unit/Hour Estimate	Unit/Hourly Price	Total Minimum Contract Amount
			\$

COMPLETE THIS PORTION IF SCOPE OF WORK IS NOT BID BY UNIT PRICE OR HOURLY RATE	
Description	Total Bid Amount
	\$

3. The undersigned affirms that of the trucking/hauling work quoted above, the following applies:

Total Minimum Contract Amount \$ _____
Percentage Subcontracted to Non-DBE Trucking Firms ____%
Brokerage Fee Charged to Non-DBE Trucking Firms ____%
Percentage Subcontracted to DBE Trucking Firms ____%

4. The undersigned affirms the amount of fees and commissions for work quoted above are as follows:

Unit Price Bid \$ _____ Fees/Commissions Portion of Bid \$ _____

5. The undersigned will sublet and/or award \$ _____ of work bid to a non-DBE firm

6. The undersigned will sublet and/or award \$ _____ of work bid to another certified DBE firm

On the _____ day of _____, 20____, by signature below, the undersigned agrees to enter into a formal agreement/subcontract for the work cited herein should the Submitter receive award of this contract from the City of Phoenix.

(Print DBE Firm Name)

(Phone Number)

(Authorized Signature)

(Print Name and Title)

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ATTACHMENT C-2

**LETTER OF INTENT TO PERFORM AS A SUBCONSULTANT/SUBCONTRACTOR/SUPPLIER
INSTRUCTIONS AND WORKSHEET**

THE FOLLOWING IS BEING PROVIDED AS AN EXAMPLE FOR CALCULATING THE AMOUNTS THAT SHOULD BE ENTERED ONTO ATTACHMENT C. FOR ASSISTANCE PLEASE CONTACT THE EQUAL OPPORTUNITY DEPARTMENT AT 602-4945-0887.

Part I. Fees and Commissions: Insert the information from Step One below in Section 2 of Attachment C of the LOI form. Transfer the information from Step Three to Section 4 of the form. This part is applicable to the use of uniformed officers to provide traffic control and security and other services provided at an hourly rate by non-employees of the DBE firm where the DBE will retain fees or commissions.

STEP ONE			
Total Number of Hours	Per Hour Bid Amount	Total Gross Bid Amount	Calculation Formula:
200	\$30	\$6,000	$200 \times \$30 = \$6,000$
STEP TWO			
Per Hour Bid Amount	Hourly Rate Paid to Officers	DBE Firm Commission/Fee	Calculation Formula:
\$30	\$21	\$9	$9 / 30 = 30\%$
STEP THREE			
Gross Bid Amount (from Step One)	Commission/Fee % (from Step Two)	Amount Counted as DBE Participation	Calculation Formula:
\$6,000	30%	\$1,800	$\$6,000 \times .30 = \$1,800$

Part II. Trucking and Hauling: DBEs should indicate in Sections 2 and 3 of Attachment C of the LOI form information regarding DBE trucking on the contract. The City allows 100 percent of the payments for services provided by DBE owned and leased trucks to be counted. The payments for non-DBE owned or leased trucks cannot be counted in full. Only the fees and commissions that the DBE firm retains over and above the leasing costs they pay for non-DBE owned or leased trucks can be counted. The City will require proof of the leasing arrangements prior to determining compliance.

STEP ONE	STEP TWO	STEP THREE
Total number of trucks to be used on the contract	Number of trucks owned by the DBE that will be used on the contract	Number of DBE leased trucks that can be counted in full
7	2	3
STEP FOUR	STEP FIVE	STEP SIX
Number of non-DBE leased trucks that cannot be counted in full (add Steps Two and Three and subtract from Step One)	Fees and Commissions that will be retained by the DBE for the trucks in Step Four that cannot be counted in full	
2	Total cost being charged to Submitter minus leasing cost of each truck times # trucks in Step Four	

ATTACHMENT D
PROPOSED DBE PARTICIPATION
(TO BE COMPLETED BY THE SUCCESSFUL SUBMITTER – DUE PRIOR TO CONTRACT AWARD)

DBE FIRM NAME	PRINCIPAL CONTACT	ADDRESS/PHONE	SCOPE OF WORK DBE WILL PERFORM	TOTAL DOLLAR VALUE OF WORK TO BE PERFORMED BY DBE	\$ VALUE OF DBE UTILIZATION APPLIED TOWARD GOAL from Attachment C
				TOTAL	

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ATTACHMENT E
SUBCONSULTANT/SUBCONTRACTOR/SUPPLIER CONTACT LIST
(TO BE COMPLETED BY THE SUCCESSFUL SUBMITTER – DUE PRIOR TO CONTRACT AWARD)

COMPANY NAME	COMPANY ADDRESS	SCOPE OF WORK SOLICITED	FIRM USED IN PROPOSAL AMOUNT (YES OR NO)	FIRM CERTIFICATION STATUS (IF KNOWN)
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED
			☐ YES ☐ NO	☐ DBE ☐ NOT CERTIFIED

NOTE: If additional space is required, please copy and submit multiple pages of the Attachment.

Successful Submitter: _____

Signature: _____

Completed by: _____

Date: _____

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ATTACHMENT F
SUCCESSFUL SUBMITTER'S STATEMENT OF DBE UTILIZATION
(TO BE SUBMITTED WITH EACH PAYMENT REQUEST/INVOICE)

(1) PAY REQUEST NO. _____ (2) REPORT PERIOD FROM _____ TO _____ SHEET ____ OF ____
(3) PROJECT NAME _____ (4) PROJECT NO. _____ (5) CONTRACT AMOUNT \$ _____
(6) CONTRACT NO. _____ (7) REQUIRED DBE UTILIZATION _____% (8) PROPOSED DBE UTILIZATION _____%

(9) DBE NAME REPRESENTATIVE NAME & TELEPHONE NUMBER	(10) CLASS OF WORK	(11) CONTRACT AMOUNT	(12) CONTRACT ADJUSTMENTS	(13) REVISED CONTRACT AMOUNT	(14) AMOUNT EARNED THIS PERIOD	(15) AMOUNT EARNED TO DATE	(16) AMOUNT RETAINED THIS PERIOD	(17) AMOUNT RETAINED TO DATE	(18) AMOUNT PAID TO DBE THIS PERIOD	(19) AMOUNT PAID TO DBE TO DATE	(20) % OF CONTRACT COMPLETE TO DATE
(21) DBE TOTALS											

(22) SUCCESSFUL SUBMITTER _____ (23) AUTHORIZED SIGNATURE _____ (24) DATE _____

(25) PERCENTAGE OF TOTAL CONTRACT COMPLETED TO DATE _____%

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ATTACHMENT G
CERTIFICATION OF PAYMENT TO DBE FIRMS
(TO BE COMPLETED BY THE SUCCESSFUL SUBMITTER AND DBE FIRM)

SUCCESSFUL SUBMITTER AFFIDAVIT:

The undersigned, having contracted as the Successful Submitter on Project # _____, hereby certifies that full payment has been made to the DBE firm cited below. The total value of all payments made to the DBE firm for materials and/or work performed on this project contract is as follows:

DBE Firm: _____ **Total Amount Paid: \$** _____

This certification is made under Federal and State laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three (3) years from the project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the Successful Submitter, all documentation supporting the Successful Submitter's position with regards to delayed or withheld payment(s) should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW, THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

By: _____
Authorized Agent for Successful Submitter (Print Name and Title)

Date: _____

DBE FIRM AFFIDAVIT:

The undersigned DBE firm hereby certifies that a contract was entered into with the above named Successful Submitter to perform work or provide materials on the project cited in this document. I further certify that the total amount of payments received as provided herein by the prime contract is accurate and unchallenged.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OF FEDERAL LAWS, THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

By: _____
Authorized Agent for DBE Firm (Print Name and Title)

Date: _____

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Sheet ____ of ____

ATTACHMENT H
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
SUBCONTRACTING/SUBCONSULTING/PROCUREMENT REPORT
(To be submitted with each pay request or invoice and at completion of contract)

Contract Number: _____ Pay Request Number _____ Date: _____

Project Name: _____ Successful Submitter: _____

Name of Subcontractor/Supplier/Subconsultant	Scope of Work/ Product Provided	Total Subcontract/ Procurement Amount	Cost of Work Invoiced This Pay Period	Total Paid to Subcontractor/Supplier/ Subconsultant To Date	Date of Final Payment
TOTALS					

By: _____ (Print Name and Title)
Authorized Agent for Successful Submitter

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**EXHIBIT H
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS**

**to be replaced with completed form
prior to execution of Agreement**

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**EXHIBIT I
RESTRICTIONS ON FEDERAL PUBLIC WORKS PROJECTS
CERTIFICATION**

**to be replaced with completed form
prior to execution of Agreement**

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**EXHIBIT J
TRADE RESTRICTION CLAUSE CERTIFICATION**

**to be replaced with completed form
prior to execution of Agreement**

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**EXHIBIT K
SUPPLEMENTAL TERMS AND CONDITIONS
TO ALL AIRPORT AGREEMENTS**

A. Definitions

1. "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport and/or Phoenix Goodyear Airport, in accordance with the context of the contract.
2. "Contract" includes any and all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions or other documents, however denominated that grant or convey a right or privilege on an Airport, and to which this Exhibit is annexed and made a part thereof.
3. "Contractor" means every lessee, sublessee, licensee, permittee, concessionaire or other person, firm or corporation exercising a right or privilege on an airport pursuant to a contract, and includes Contractor's heirs, personal representatives, successors-in-interest and assigns.
4. "Premises" means the leasehold or site occupied by Contractor pursuant to the lease, license or permit that is the subject of this Contract.

B. Assurances

1. Contractor shall furnish its services on a fair, equal and not unjustly discriminatory basis to all users of the Airport.
2. Contractor shall charge fair, reasonable and not unjustly discriminatory prices for each unit or services; provided that, Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith, without liability therefor; or, at the election of the City of Phoenix or the United States, either or both of said Governments shall have the right to judicially enforce said requirement.
3. Contractor warrants that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap, be excluded from participating in any activity conducted on or from the Premises, or otherwise be excluded from the benefits offered by Contractor to the general public. Contractor further warrants

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that it will comply with all pertinent statutes, Executive Orders, and rules promulgated thereunder, to assure that no person is excluded on the grounds of race, creed, color, national origin, sex, age, or handicap.

4. As a part of the consideration for this Contract, Contractor does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended for another purpose involving the provision of similar services or benefits, Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Code of Federal Regulations, Title 49, DOT, Subtitle A, Office of the Secretary of Transportation, Part 21-Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations exist and may be amended from time-to-time.

If this Contract is a lease, then this Covenant is hereby made a covenant running with the land for the term of the lease, and is judicially enforceable by the United States.

5. As a part of the consideration of the Contract, Contractor does hereby covenant and agree that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any improvements on, over or under such Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and that the contractor shall use the Premises in accordance with all other requirements imposed pursuant to 49 C.F.R. Part 21, as it may be amended.

If this Contract is a lease, then this Covenant is hereby made a covenant running with the land for the term of the lease, and is judicially enforceable by the United States.

6. The foregoing discrimination covenants are a material part of this Contract and for breach thereof the City of Phoenix shall have the right to terminate this Contract and to reenter and repossess the Premises and facilities thereon, and hold the same as if said Contract had never been made. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.
7. Contractor agrees to insert the foregoing six provisions in any contract by which Contractor grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on or from the Premises.

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8. Contractor agrees that it will undertake an affirmative action plan in conformance with 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.
9. City of Phoenix reserves the right to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations and additions.
10. The City of Phoenix reserves the right, but is in no way obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.
11. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation or maintenance of the Airport. In the event that FAA or its successors require modifications or changes in the Contract as a condition to the obtaining of funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications or changes as part of this Contract.
12. The Contract is subordinate to the reserved right of the City of Phoenix, its successors and assigns, to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft through said airspace or in landing at or taking off from, or operation on an Airport.
13. Contractor agrees to comply with the notification and review requirements as required by Title 14 of the Code of Federal Regulations, 14 CFR Part 77- Objects Affecting Navigable Airspace, in the event future construction of a structure is planned for the Premises, or in the event of a planned modification of a structure

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on the Premises. Contractor shall submit the required FAA Form 7460-1—Notice of Proposed Construction or Alteration—and provide documentation showing compliance with the federal requirements. Once the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself, its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree, on the Premises above the mean sea level elevation for: (1) Phoenix Sky Harbor International Airport, 1,133 feet; (2) Phoenix Goodyear Airport, 968 feet; (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of said covenant the City of Phoenix reserves the right to enter upon the Premises and remove the offending structure or cut the offending tree, all at the expense of Contractor.

14. Contractor, by accepting this Contract, covenants for itself, its successors and assigns that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport, or otherwise constitute a hazard to air navigation. As a remedy for the breach of said covenant the City of Phoenix reserves the right to enter upon the Premises and cause the abatement of such interference, all at the expense of Contractor.
15. Contractor acknowledges that nothing contained in this Contract shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. §40103(e).
16. This Contract and all the provisions hereof are subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation and taking-over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.
17. If the Contract involves construction, the contractor shall carry out the project in accordance with FAA airport design, construction and equipment standards and specifications current on the date of project approval.
18. Contractor is encouraged to use fuel and energy conservation practices.

C. City of Phoenix Affirmative Action Requirements

If Contractor is by this Contract a supplier to, or lessee of, the City, then the following requirement of the Phoenix City Code, Chapter 18, Article V, Section 18-22(G) applies:

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

D. Immigration Reform and Control Act of 1986 (IRCA)

Contractor understands and acknowledges the applicability of the IRCA to it. Contractor agrees to comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify such compliance.

E. Conflict of Interest

Contractor acknowledges that the terms and conditions of Arizona Revised Statutes §38-511 are incorporated into this Contract.

F. Iran and Sudan

In accordance with state law, Contractor certifies that it does not have scrutinized business operations in Iran or Sudan. If Contractor's certification is found to be false, the City may terminate this Contract or impose other remedies due to false certification.

G. Legal Worker Requirements

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

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1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.
2. A breach of warranty under paragraph 1 shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
3. The City retains the legal right to inspect the papers of the Contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that Contractor or subcontractor is complying with the warranty under paragraph 1.

H. Disadvantaged Business Enterprise Requirements

1. To the extent that this Contract is covered by 49 CFR Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation Regulations at 49 CFR Part 26. The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Contractor agrees to include the foregoing statement in any subsequent Contract that it enters and cause those businesses to similarly include said statement in further agreements.

2. To the extent that the Contract is a concession agreement covered by 49 CFR Part 23, the concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

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EXHIBIT L
COMPLIANCE WITH ENVIRONMENTAL LAWS

Contractor shall, at Contractor's own expense, comply with all present and subsequently enacted Environmental Laws, and any amendments thereto, affecting Contractor's occupation and use of the Premises.

A. DEFINITIONS

1. "Environmental Laws" means those laws promulgated for the protection of human health or the environment, including but not limited to, the following as the same are amended from time to time: the **Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA]**, 42 U.S.C. Sections 9601 et seq., as amended by the **Superfund Amendment and Reauthorization Act [SARA]**; the **Solid Waste Disposal Act [SWDA]**, 42 U.S.C. Sections 6901 et seq., as amended by the **Resource Conservation and Recovery Act [RCRA]** including Subtitle I, Underground Storage Tanks; the **Toxic Substances Control Act [TSCA]**, 15 U.S.C. Sections 2601 et seq.; the **Public Health Service Act (Title XIV) [PHSA]** a.k.a. the **Safe Drinking Water Act [SDWA]** and SDWA Amendments of 1996, 42 U.S.C. Sections 300f et seq.; the **Federal Water Pollution Control Act [FWPCA]**, as amended by the **Clean Water Act**, 33 U.S.C. Sections 1251 et seq.; the **Clean Air Act**, 42 U.S.C. Sections 7401 et seq.; **Title 49 of the Arizona Revised Statutes**, including the **Arizona Environmental Quality Act**, A.R.S. Sections 49-201 et seq.; the **Arizona Hazardous Waste Management Act**, A.R.S. Sections 49-921 et seq.; the **Arizona Underground Storage Tank Regulation Act**, A.R.S. Sections 49-1001 et seq.; the **Arizona Solid Waste Management Act**, A.R.S. Section 49-701 et seq.; the **Occupational Safety and Health Act of 1970** as amended, 29 U.S.C. Sections 651-678 and the regulations promulgated thereunder, and, any other laws, regulations and ordinances (whether enacted by local, state or federal government) now in effect or hereafter enacted, that provide for the regulation or protection of human health or the environment, including the ambient air, ground water, surface water, and land use, including substrata soils.
2. In this Contract, the term "**regulated substances**" means:
 - a. Those substances identified or listed as a hazardous substance, pollutant, hazardous material, and, petroleum, in **CERCLA/SARA**; the **Hazardous Materials Transportation Act**, 49 U.S.C. Sections 5101 et seq.; **RCRA, Subtitle I, Regulation of Underground Storage Tanks**, 42 U.S.C. Sections 6991 through 6991i; **Clean Air Act**, 42 U.S.C. Section 7412 et seq.; and in any rule or regulation adopted to implement said statutes.

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- b. Those substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a hazardous, special, or solid waste in the **Arizona Environmental Quality Act**, A.R.S. Sections 49-201 et seq., including but not limited to, the **Water Quality Assurance Revolving Fund Act [WQARF]**, A.R.S. Sections 49-281 et seq.; the **Solid Waste Management Act**, A.R.S. Sections 49-701 et seq.; the **Underground Storage Tank Regulation Act**, A.R.S. Sections 49-1001 et seq.; A.R.S. Sections 49-851 through 49-868 pertaining to **Management of Special Waste**; the **Hazardous Waste Management Act**, A.R.S. Sections 49-921 et seq.; and in any rule or regulation adopted to implement said statutes.
 - c. All substances, materials and wastes that are, or that become, regulated, or that otherwise are classified as hazardous or toxic, under any Environmental Law during the term of this Contract.
- 3. The term “release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.
 - 4. As used herein, the term “Premises” means Contractor’s leasehold and/or any part or portion of Phoenix Sky Harbor International Airport (PSHIA), Phoenix Deer Valley Airport (DVT), Phoenix Goodyear Airport (GYR) or City owned property where Contractor or its employees or agents causes to occur a release of a regulated substance.
 - 5. As used herein, the term “Contractor” means every consultant, lessee, sublessee, licensee, permittee, concessionaire, tenant or other person, firm or corporation occupying or using the Premises pursuant to an agreement and includes Contractor’s heirs, personal representatives, successors-in-interest and assigns.

B. COMPLIANCE

- 1. Contractor shall not cause or permit any regulated substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises, or transported to or from the Premises, by Contractor, its agents, employees, Contractor’s invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

Contractor may provide for the treatment of certain discharges regulated under the City of Phoenix pretreatment ordinances pursuant to Chapter 28 of the Phoenix City Code or such other ordinances as may be promulgated and the Federal Clean Water Act, 33 U.S.C. Section 1251 et seq.

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Contractor shall indemnify, defend and hold harmless, on demand, City of Phoenix ("City"), its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, the environment or Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of Contractor's occupancy or use of the Premises during the term of this Contract or any previous contract or uses of the Premises by Contractor or its owners or affiliated entities, agents, employees, invitees, visitors or licensees. Regardless of the date of termination of this Contract, Contractor's obligations and liabilities under this Section shall continue so long as City bears any liability or responsibility under the Environmental Laws arising from Contractor's occupancy or use of the Premises during the term of this Contract. This indemnification of City by Contractor includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of regulated substances caused by Contractor to be present on or under the Premises or present in the soil or ground water on or under the Premises or present in surface waters on or adjacent to the Premises.

2. Without limiting the foregoing, if the release by Contractor of any regulated substance on or under the Premises, or in surface waters on or adjacent to the Premises results in any contamination of the Premises or surface waters, Contractor shall promptly take all actions at its sole cost and expense that are necessary to mitigate any immediate threat to human health or the environment. Contractor shall then undertake any further action necessary to return the contaminated site to the condition existing prior to the introduction by Contractor of any regulated substance; provided that City's approval of such actions shall first be obtained. Contractor shall undertake such actions without regard to the potential legal liability of any other person; however, any remedial activities by Contractor shall not be construed to impair Contractor's rights, if any, to seek contribution or indemnity from another person.
3. Contractor shall, at Contractor's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Contractor's occupancy or use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or remediation plan that may be necessary due to any actual or potential spills or discharges of

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regulated substances on, under or from the Premises, or in surface waters on or adjacent to the Premises during the term of this Contract. At no cost or expense to City, Contractor shall promptly provide all information requested by City pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, City shall have the right to inspect, within ten (10) days of Contractor's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets and legally privileged documents, regarding environmental conditions relating to the use, storage, or treatment of regulated substances by Contractor on, under or from the Premises or in surface waters on or adjacent to the Premises.

4. Contractor shall notify the Aviation Director within twenty-four (24) hours upon learning of the following:
 - a. Any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Contractor's occupancy or use of the Premises;
 - b. Any change in Contractor's activities on the Premises that will change or have the potential to change Contractor's or City's obligations or liabilities under Environmental Laws;
 - c. Any assertion of a claim or other occurrence for which Contractor may incur an obligation under this Section.
5. Contractor shall at its own expense obtain and comply with any permits or approvals that are required or may become required as result of any occupancy or use of the Premises by Contractor, its agents, employees, invitees and assigns.
6. Contractor shall insert the provisions of this Exhibit in any agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Contract.
7. Contractor shall obtain and maintain compliance with any applicable financial responsibility requirements of federal, state and/or local law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a regulated substance and present evidence thereof to the City, as may be applicable.

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8. Contractor shall take reasonable precautions to prevent other persons not acting under Contractor's authority from conducting any activity that would result in the release of a regulated substance on, under or from the Premises or in surface waters on or adjacent to the Premises. Contractor shall also exercise due care with respect to any regulated substance that may come to be located on the Premises as a result of the actions of third parties who are not under Contractor's authority.
9. Contractor shall make its best efforts to minimize its production of a waste stream that includes regulated substances, and shall minimize the storage of regulated substances on, in and around the Premises.

C. TERMINATION OF AGREEMENT

Contractor's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Exhibit or applicable Environmental Law shall constitute a material breach of this Contract and shall permit the City to pursue the following remedies, in addition to all other rights and remedies provided by law or otherwise provided for in this Contract, to which the City may resort cumulatively, or in the alternative:

1. The City of Phoenix may, at the City's election, keep this Contract in effect and enforce all of its rights and remedies under the Contract, including (1) the right to recover rent and other sums as they become due by appropriate legal action and/or (2) the right, upon ten (10) day's written notice to Contractor, to make payments required of Contractor or perform Contractor's obligations and be reimbursed by Contractor for the cost thereof, unless such payment is made or obligation performed by Contractor within such ten (10) day period.
2. The City of Phoenix may, at the City's election, terminate this Contract upon written notice to Contractor.
3. Notwithstanding any other provision in this Contract to the contrary, the City shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Laws on, under or from the Premises or in surface waters on or adjacent to the Premises, without waiving any of its rights under this Contract.
4. The exercise by the City of any of its rights under Section C of this Exhibit shall not release Contractor from any obligation it would otherwise have under this Exhibit.
5. The covenants of this Exhibit shall survive the termination of this Contract.

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EXHIBIT M
RIGHTS IN DATA AND RIGHTS TO INVENTIONS

Consultant, by entering into this Agreement with the City of Phoenix to perform services associated with or in requirement of the conditions stated in this Agreement does, by affixing its authorized signature on the lines provided below, agree to the following:

1. That no sole rights to data provided in the submission or in fulfillment of contract requirements exist within the domain of Consultant.
2. That all data provided in the submission or in the documents provided in fulfillment of contracts become the property of the City of Phoenix for its use and benefit.
3. That no data submitted in documents required for contract fulfillment will be regarded by the City of Phoenix as proprietary to Consultant.
4.
 - a. "Intellectual Property Rights" or "IPR" mean all intellectual property rights, including without limitation, any rights in any invention, patent, discovery, improvement, know-how, utility model, trade-mark, copyright, industrial design or mask work, integrated circuit topography, trade secret and all rights of whatsoever nature in computer software and data, Confidential Information, and all intangible rights or privileges of a nature similar to any of the foregoing, including in every case in any part of the world and whether or not registered, and shall include all rights in any applications and granted registrations for any of the foregoing.
 - b. "Joint IPR" means the Intellectual Property Rights conceived, created, developed, or reduced to practice in a Project pursuant to this Agreement.
5. Intellectual Property Ownership – The City shall own all right, title, and interest in any Intellectual Property conceived, developed, created, or reduced to practice pursuant to this Agreement and Consultant shall have no ownership interest therein. Consultant hereby irrevocably transfers, conveys and assigns to the City all of its right, title and interest therein and in any property owned or to be owned by the City under this Agreement. Consultant shall execute such documents, render such assistance, and take such other action as the City may reasonably request, at the City's reasonable expense, to apply for, register, perfect, confirm, and protect the City's Intellectual Property ownership interests. The City shall have the exclusive right to apply for or register any patents, mask work right, copyrights, and such other proprietary protections with respect thereto.

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

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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 with its obligations under this paragraph.

All Joint IPR will be the exclusive property of the City; and Consultant hereby assigns all right, title, and interest in the same to the City. Any and all intellectual property conceived by Consultant prior to the term of this Agreement and utilized by it in rendering duties to the City are hereby licensed to the City for use in its operations and for an infinite duration. This license is non-exclusive, and may be assigned without Consultant's prior written approval by the City. Consultant agrees to provide all reasonable assistance requested by the City for the registration and protection of such intellectual property rights free of charge.

Authorized Signature _____

Typed Name _____

Typed Title _____

Date _____