

PHX DVT GYR

CITY OF PHOENIX AVIATION DEPARTMENT

Request for Qualifications (RFQ) for Community Outreach, Public Relations, and Translation Services

Schedule

ACTIVITY All times are local Phoenix time	DATE
Issue RFQ	April 20, 2011
Pre-Submittal Meeting at 9:00 a.m.	April 27, 2011
Submittal of Written Questions by 11:00 a.m.	May 4, 2011
Responses to Written Questions	May 11, 2011
Delivery of Submittals by 11:00 a.m.	May 18, 2011
Evaluation of Submittals	June 2011
Short List and Interviews (if applicable)	June 2011
Award Recommendation to:	
Business & Development Subcommittee	August 4, 2011
Phoenix Aviation Advisory Board	August 18, 2011
Phoenix City Council	September 21, 2011
Commencement of Agreement	October 1, 2011

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(TEL)/800-781-1010 (TTY)
busopps.aviation@phoenix.gov
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 (City) is seeking community outreach, public relations and translation services to support the Voluntary Acquisition and Relocation Services Program (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 non-resident property owners the opportunity to sell their properties to the City and owner-occupants and tenants have the opportunity to 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 in 2001).

This area is home to an ethnically and socio-economically diverse community with residents, property owners, and tenants who are monolingual (Spanish) and bilingual (English/Spanish).

As of December 31, 2010, VARS had acquired over 600 properties. Approximately 700 properties are still eligible for VARS; 30 of which are currently in progress of being acquired. VARS is expected to sunset within the next 3 to 4 years.

B. Minimum Qualifications

Each submitter must identify the project/account manager responsible for providing services under, and serving as the submitter's day-to-day contact for CNRP during, the agreement resulting from this process. The project/account manager must have 5 years' experience performing public relations and community outreach services, and reside in Maricopa County.

Each submitter must also have 3 years' experience providing written and verbal

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translations to and from English and Spanish. A subcontractor's experience may be used to satisfy the minimum qualification for translation services.

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.

C. Federal Requirements

1. Outreach Requirements

For this business opportunity, the City has not established a race- and gender-conscious Disadvantaged Business Enterprise (DBE) participation goal. The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. After review of the market, there is 9.19% availability of DBE-certified firms. The City supports the use of race neutral measures to facilitate participation by DBEs and other small businesses, and encourages submitters to subcontract portions of their work that they might otherwise perform with their own forces.

This project will utilize federal funds provided by the Federal Aviation Administration and is subject to the requirements of 49 Code of Federal Regulations Part 26 and the U.S. Department of Transportation DBE Program.

Each submitter must conduct and document outreach efforts in compliance with **Exhibit G** of **Attachment H**. Documentation of outreach efforts shall be submitted by the successful submitter prior to contract award.

2. Affirmative Action Requirements

The successful submitter shall also complete and submit affirmative action forms, and its Affirmative Action Plan as applicable, to the City's Equal Opportunity Department prior to contract award.

D. Agreement Term and Contractual Relationship

The agreement term will be 1 year with 4 one-year renewal options, to be exercised at the sole discretion of the Aviation Director.

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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 H**, 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 this meeting.

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 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 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.

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This prohibition does not apply to subcontractors.

II. SCOPE OF WORK

A. Overview

The successful submitter will assist VARS staff with community outreach efforts, public relations, and translation services, including interpretation services. A full description of these services is provided in **Exhibit A of Attachment H**.

The focus of this scope is conducting community outreach efforts to individuals, businesses, and other community organizations. This scope does not include media relations and no media buys will be placed by the successful submitter. The successful submitter will have minimal, if any, interaction with media outlets.

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

III. SUBMITTAL INSTRUCTIONS

A. Delivery of Submittal

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,
- 6 hard copies of the submittal, and
- 1 electronic copy 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 Submittal

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

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scope of work and fees with the most qualified submitter.

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

- 1. Notarized Affidavit (Attachment B)**
- 2. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (Attachment C)**
- 3. Lobbying Restrictions Certification (Attachment D)**
- 4. Restrictions on Federal Public Works Projects Certification (Attachment E)**
- 5. Trade Restriction Clause Certification (Attachment F)**
- 6. Airport Contracting Policy Certification (Attachment G)**
- 7. Qualifications & Experience Statement**
 - a) Each submitter shall provide the qualifications and experience of the submitting entity and any subconsultants and address each bullet point listed under **Item 1 of Section IV (A)**.
 - b) Each submitter shall provide sufficient documentation, included resumes, to demonstrate its project/account manager meets the minimum qualifications listed in **Section I (B)** and is qualified to perform the scope of work described in this RFQ. Each submitter shall also address each bullet point listed under **Item 2 of Section IV (A)**.
 - c) Each submitter shall also provide the qualifications and experience, including resumes, of any additional staff to be assigned to this scope of work and address each bullet point listed under **Item 2 of Section IV (A)**.
- 8. Proposed Approach to Scope of Work**

In this section, each submitter shall provide a narrative description of its approach to providing community outreach, public relations, and translation services, and:

- a) Staffing plan, which should include:
 - Approach for supplying community outreach and public relations services in both English and Spanish

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- Methods for acquiring subcontractors through a competitive bid process in compliance with all federal, state and local requirements, if needed;
 - Number of staff, by job category, needed to perform scope of work;
 - Number of hours per week staff will be dedicated to this scope, per job category; and
 - Organizational chart and description of responsibilities and tasks of staff and any proposed subcontractors.
- b) Sample of creative services in the form of a 1-page brochure/flyer/promotional piece (single- or double-sided will be accepted).
- c) Submitter's delineation between providing interpretation skills and translation skills.

Submitters should also individually address each bullet point under **Item 3 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 exceptions to any portion of the RFQ, the submitter shall state so on a page entitled "Exceptions." If no exceptions 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)**.

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 Submitter and Subconsultants, if any (0-40 points)

- Number of years and type of experience providing:
 - community outreach services in English and Spanish
 - graphic design services
 - public relations services
 - translation and interpretation services to and from English and Spanish
 - these services in Arizona
- Demonstrated success providing similar services to similar communities

2. Qualifications & Experience of Project Manager and Assigned Staff (0-30 points)

- Number of years and type of experience providing:
 - community outreach services in English and Spanish
 - graphic design services
 - public relations services
 - translation and interpretation services to and from English and Spanish
 - these services in Arizona
- Number of years and type of experience of account/project manager managing client services
- Education and training related to the scope of work

3. Approach to Scope of Work (0-30 points)

- Methodology for providing:
 - community outreach services in English and Spanish
 - community outreach services to owner occupants and non-resident property owners
 - graphic design services
 - public relations services
 - translation and interpretation services to and from English and Spanish
- Philosophy for providing services to meet the VARS community's needs
- Plan for timely responding to VARS staff
- Proposed approach to project management of the entire scope of work
- Proposed staffing plan

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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. Airport Contracting Policy

Beginning on the date this RFQ was issued, all submitters and their representatives will refrain, under penalty of the submitter's disqualification, from direct or indirect contact, for the purpose of influencing the selection or creating bias in the selection process, with any person who may play a part in the selection process. See the complete Airport Contracting Policy in **Attachment G**.

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:

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;

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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 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

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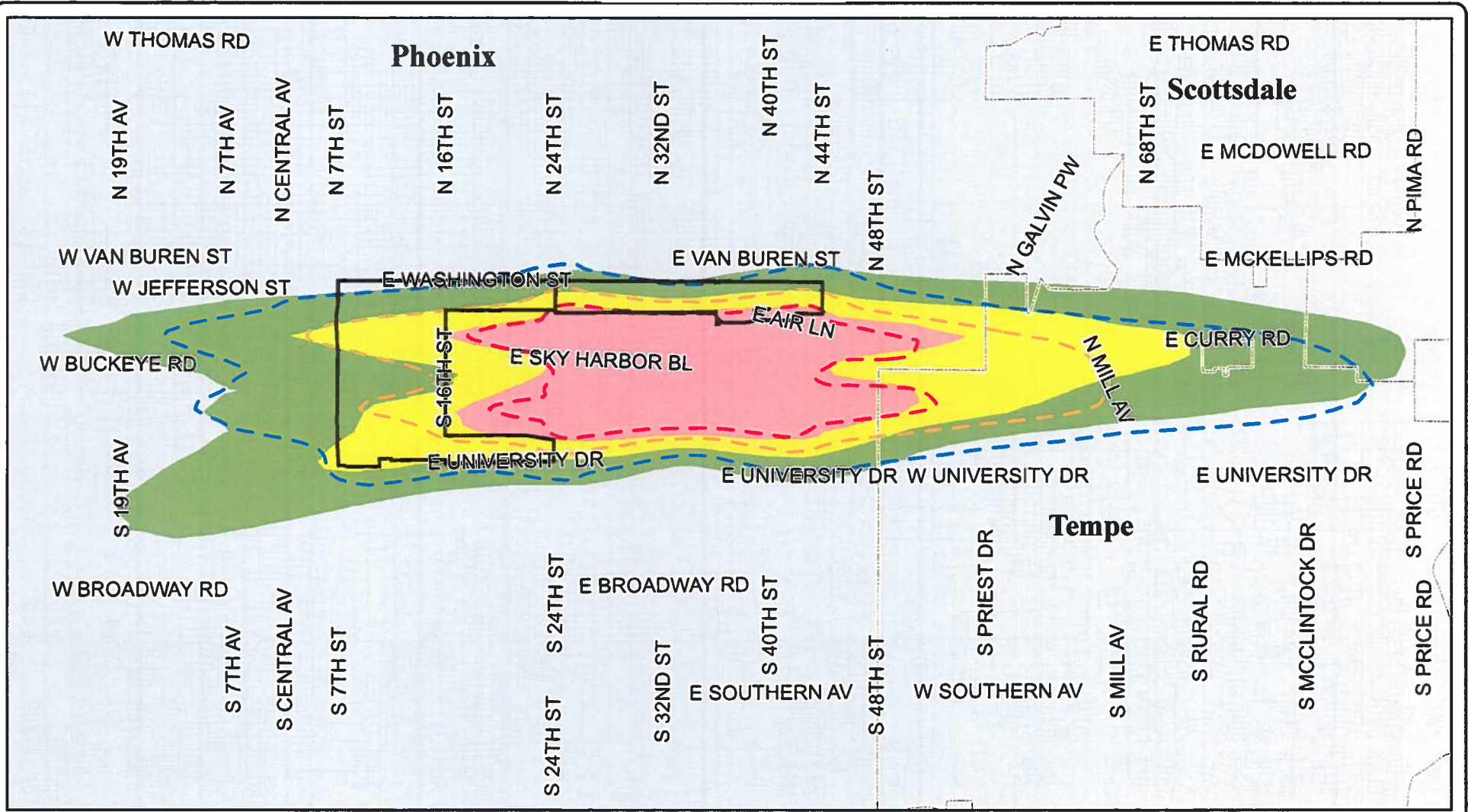
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pay any fee or commission, or any other item of value contingent on the award of an agreement to any employee, official or current contracting consultant of the City. Any submitter unable to comply with any required certifications may be disqualified.

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 phoenix.gov/avirfp, prior to the award of any agreement resulting from this process.

H. 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.



Community Noise Reduction Program

C N R P

1 inch equals 4,500 feet

 Miles

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

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 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 submitted information 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, will provide the best quality of service to the City at reasonable rates.
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 and E-Mail: _____

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

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3. Company and Reference Name: _____

Address: _____

Telephone and E-Mail: _____

Signature(s)

Name of Submitter (Legal Name): _____

Printed Name of Authorized Person*: _____

Title: _____

Business Address of Submitter: _____

Telephone/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/E-mail: _____

Signature of Authorized Person: _____

Notary

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

Notary Signature: _____

My Commission Expires: _____

Affix Seal

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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.
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

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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 _____

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ATTACHMENT D

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

**CITY OF PHOENIX
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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

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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 has

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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 _____

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ATTACHMENT F

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

Odwyerpr.com

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ATTACHMENT G

Airport Contracting Policy Certification

A. GENERAL AIRPORT CONTRACTING POLICY

Beginning on the date the RFQ is issued, and except as provided in the following subsections, all submitters, including submitters' agents, employees, representatives, lobbyists, attorneys, proposed partner(s), subcontractor(s), joint venturer(s), and member(s) (collectively the "Submitter") will refrain, under penalty of the Submitter's disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department heads and the Phoenix Aviation Advisory Board (PAAB). This Airport Contracting Policy ("Policy") is intended to create a level playing field for all potential Submitters, assure that contract decisions are made in public, and to protect the integrity of the submittal process.

This Policy is not intended to preclude Submitters from giving public comments at a regularly scheduled meeting of the PAAB or one of its subcommittees.

Regular business discussions between current business partners or civic groups and the Aviation Director, Assistant Aviation Directors, and/or any Deputy Aviation Director will not be construed as a violation of this Policy as long as a specific submittal is not discussed.

B. CONTACT WITH PHOENIX CITY COUNCIL

This Policy is not meant to preclude Submitters from discussing their submittals with one or more members of the Phoenix City Council, provided such meetings are scheduled through the Phoenix City Clerk's office, conducted in person at 200 West Washington, and are posted as open meetings with the City Clerk at least twenty-four (24) hours prior to the scheduled meeting. The Clerk's posting shall include and detail the participants, the subject matter and shall invite the public and press to participate. No contacts made by telephone, other than to schedule a public meeting, are permitted, and copies of contacts made via letter, fax, e-mail or other written method shall be made available to the public, press, and all Submitters.

C. CERTIFICATION

All Submitters and Submitters' partner(s), and/or subcontractor(s), if applicable, shall execute and submit the Airport Contracting Policy Certification.

D. THE PRE-SUBMITTAL MEETING

Potential Submitters should attend the pre-submittal information meeting to obtain clarification and explanation of the items included in the RFQ. Questions submitted in writing at the pre-submittal meeting shall be responded to in writing and distributed to all Submitters who attended the pre-submittal meeting.

Interested Submitters who do not attend the pre-submittal meeting will not receive notification of availability of any supplemental materials, responses to written questions, or addenda unless specifically requested in writing.

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E. QUESTIONS

If interested Submitters need further information or clarification of the RFQ, requests shall be in writing and staff shall notify all registered pre-submittal meeting attendees when written answers are available on the website. **To adequately respond in writing to questions submitted, no questions will be accepted after the deadline date and time listed on page 1 of the RFQ.** All questions should be sent to Gretchen Wolfe at busopps.aviation@phoenix.gov.

F. APPEAL OF DISQUALIFICATION TO AVIATION DIRECTOR

If a Submitter is disqualified due to submitting a submittal deemed to be non-responsive, a violation of the Policy, or is disqualified for any other grounds, the Submitter may submit written information to the Aviation Director that the Submitter reasonably believes supports a rescission of the disqualification. Such information must be filed with the Aviation Director within seven (7) calendar days after the Notice of Disqualification has been delivered to the Submitter, must be in writing, and must include all of the following:

- The name, address and telephone number of the Submitter;
- The signature of the Submitter or its representative;
- Identification of the RFQ challenged;
- A detailed statement of the legal and factual grounds supporting its request for a rescission of the disqualification, including copies of relevant documents; and,
- The form of relief requested.

The Aviation Director, or his/her designee, may submit the information to anyone necessary in order 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. As a condition to this right to appeal, the Submitter agrees to comply with paragraphs "A" and "B" of this Policy.

G. REQUEST FOR REVIEW OF AWARD RECOMMENDATION

If a Submitter believes that the evaluation panel has erred in its recommendation to the Aviation Director, the Submitter may submit written information to the Aviation Director that the Submitter reasonably believes supports that the evaluation panel has erred in its recommendation. The request for review of the recommendation must be filed with the Aviation Director within seven (7) calendar days after an award recommendation is posted on the website, must be in writing, and must include all of the following:

- The name, address and telephone number of the Submitter;
- The signature of the Submitter or its representative;
- Identification of the RFQ challenged;
- A detailed statement of the legal and factual grounds supporting its request for review of the award recommendation, including copies of relevant documents; and,
- The form of relief requested.

The Aviation Director, or his/her designee, may submit the information to anyone necessary in order 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. As a condition to this right to request review, Submitter agrees to comply with paragraphs "A" and "B" of this

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Policy.

H. PROCEDURAL QUESTIONS

If a Submitter has a procedural question with regard to this Airport Contracting Policy, the question shall be directed to Gretchen Wolfe at the contact information listed above.

All Submitters and Submitters' partner(s), subcontractor(s), joint venturer(s), and member(s), if applicable, shall execute and submit an Airport Contracting Policy Certification as part of its submittal.

Please list all partner(s), subcontractor(s), joint venturer(s), and member(s) below and ensure that a copy of the Airport Contracting Policy Certification has been executed and submitted for each of them as part of your submittal, or write "none" if applicable.

Submitter hereby acknowledges that the foregoing Policy is understood and that the Submitter will abide by it. As of the date this RFQ is issued, the Policy is in effect.

Submitter Signature _____

Submitter Name _____
(please print)

Date _____

List any Partner(s), Subcontractor(s), Joint Venturer(s), and Member(s)		
Company Name (Write "None" if applicable)	Contact Name	Signature of Partner(s), Subcontractor(s), Joint Venture(s), and Member(s)

CITY OF PHOENIX
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ATTACHMENT H

**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 Community Outreach, Public Relations and Translation 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. This Agreement shall commence on _____, 20__, and the term shall be for one (1) year, with four (4) 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 Section 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 _____ 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**. Invoices 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 _____ of every month. 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 and Training Travel and Related Expenses, revised September 1, 2006,

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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 _____, 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 professional services that will be in accordance with the Scope of Work as set forth in **Exhibit A**, which may be supplemented with additional detail from time to time during the term of the Agreement, and that are satisfactory to the City. The City reserves the right to require any Services performed under this Agreement be conducted on the City's premises. 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 Voluntary Acquisition and Relocation Services (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. Violation of this paragraph by Consultant or its subcontractors is a material breach and may result in immediate termination of this Agreement without notice. The obligations of Consultant and its subcontractors under this paragraph shall survive the termination of this Agreement.

4. PROJECT STAFFING

- A.** 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. At any time hereafter Consultant desires

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to change key staff while performing under the Agreement, Consultant shall submit the qualifications of the new staff to the City for prior approval. Key staff shall include, but are not limited to, principal-in-charge and project manager(s). The City reserves the right to designate which positions are deemed key staff.

- B.** 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. 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.
- C.** Consultant shall comply with the Staffing Plan proposed in its response to the Request for Qualifications (RFQ) and attached hereto as **Exhibit D**.
- D.** Consultant shall make modifications to the Staffing Plan as appropriate; all changes are subject to City review and approval.
- E.** The Staffing Plan shall be kept current and on file at all times with the VARS Program Manager.
- F. 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.

5. TRANSITION OF SERVICES

- A.** 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

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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.

- B.** Consultant agrees to cooperate with its successor, if applicable, in order to enhance the continuity and consistency of the Services provided under this Agreement.
- C.** Consultant shall maintain complete responsibility for providing the Services under this Agreement during its phase-out period.

6. 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 "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or wrongful acts, errors or omissions of Consultant or any of its owners, officers, directors, agents, 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 Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Consultant from and against any and all claims. It is agreed that Consultant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, Consultant agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by Consultant for the City.

7. 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 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.

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8. 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.

9. 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.

10. 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.

11. AFFIRMATIVE ACTION REQUIREMENT

In order to do business with the City, Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Affirmative Action Program. Consultant is responsible for maintaining its eligibility during the life of the Agreement and failure to do so may result in termination of the Agreement.

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Consultant will direct any questions in regard to the Affirmative Action Program to the Affirmative Action Contract Compliance Section of the Equal Opportunity Department, (602) 262-6790.

12. DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND SMALL BUSINESS UTILIZATION

A. The City has established race-and gender-neutral measures for this Agreement that require Consultant to conduct outreach to achieve participation from small businesses, including suppliers of goods and services at levels comparable to their availability. The City encourages Consultant to voluntarily utilize small businesses wherever possible.

B. Consultant acknowledges it proposed the following utilization throughout the term of this Agreement, as reflected in the Small Business Utilization Commitment attached hereto as **Exhibit F** and incorporated herein:

Participation as subcontractor, subconsultant, or suppliers of goods and services as a percentage of the operating expenses or cost of goods sold associated with this Agreement: DBE _____ percent (____%), and Small Business _____ percent (____%).

C. Consultant agrees to maintain the above-listed DBE and small business utilization throughout the term of the Agreement. Consultant agrees to notify the City of Phoenix Equal Opportunity Department of any changes in DBE or small business status, including level of utilization, identity of DBE or small business subcontractor, subconsultant, or suppliers of goods and services, if applicable, and eligibility of those businesses for DBE designation. Consultant agrees to use continued good faith efforts to maintain the utilization of its DBE and small business subcontractor, subconsultant, or suppliers of goods or services included in this Agreement.

D. By execution of this Agreement, Consultant agrees to not discriminate against any small business because of the owner's gender, race, color, or national origin in connection with its participation under this Agreement or providing of goods and services to support this Agreement as required by 49 Code of Federal Regulations (CFR) Part 26. See **Exhibit G** for the Disadvantaged Business Enterprise (DBE) Program Race- and Gender-Neutral Contract Clause for Professional Services Agreements requirements attached hereto and incorporated herein.

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- E.** If during the term of this Agreement a DBE or small business Partner or supplier of goods and services is no longer available to conduct business with Consultant, then Consultant will be required to conduct outreach efforts to continue to achieve small business utilization in accordance with this Agreement. The outreach efforts by Consultant must meet requirements of the City and the selection of the replacement subcontractor, subconsultant, or supplier of goods and services is subject to the approval of the City.
- F.** This Agreement shall be subject to review for DBE utilization and goals may be established before any extension of the Agreement.
- G.** Failure of Consultant to maintain its DBE or small business utilization throughout the term of the Agreement, or to demonstrate it has met the outreach requirements for a reduction in the amount of utilization, may be a material breach of the Agreement.

13. 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.

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- 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.

14. 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 21.

B. State and Federal Certifications, Warranties and Requirements

- 1) 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.
- 2) 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

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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, along with the environmental laws as set forth in **Exhibit L** and incorporated herein by reference.

D. Federal Acquisition Regulations

Consultant acknowledges that the CNRP VARS project is funded by federal grants and passenger facility charges. Consultant is providing Community Outreach, Public Relations and Translation 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 (refer to the Quick Reference Guide set forth in **Exhibit M**). 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.

15. 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

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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.

C. Additional City Rights Regarding Security Inquiries

In addition to the foregoing, the City reserves the right but not the obligation 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.

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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 6 of this Agreement, Consultant shall defend, indemnify and hold harmless the City for any and all Claims (as defined in Section 6) 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.

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 13.

16. 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.

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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.

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

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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 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.

17. 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 and VARS Program Manager 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.

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18. REMOTE ACCESS TO CITY OF PHOENIX NETWORKED ASSETS

- A. Access to the City's Virtual Private 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 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.

19. 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.

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

20. 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.

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- 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.

21. 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.

22. 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 performing Services shall include Consultant's principal, _____ . Therefore, should the above-named individual sever his/her 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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23. 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.

24. 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.

1) If to Consultant: _____

Telephone: _____
Facsimile: _____
E-Mail: _____

2) 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.

25. 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.

26. 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.

27. 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.

28. 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:

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

B. Final Payment

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

C. Temporary Suspension

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

29. 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

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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.

30. 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.

31. 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, national emergencies, 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.

32. 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 N**.

B. Intellectual Property Indemnification

In addition to the indemnification in Section 6 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.

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.

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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 Consultant.
- 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.

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.

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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.
- 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.

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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 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

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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 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.

33. RELEASE OF INFORMATION - ADVERTISING AND PROMOTION

- A. Consultant shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Agreement, the Services, or any part thereof; or (2) any documentation or the contents thereof, without the prior written consent of the City, except as required by law. The name of any site on which Services are performed shall not be used in any advertising or other promotional context by Consultant without the prior written consent of the City.
- B. Consultant shall comply with the Aviation Department's "Contractor Communication Procedures" available at <http://skyharbor.com/about/contractorcommunicationprocedures.html>.

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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 28 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, 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.

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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 any right of the public or any member thereof as a third party beneficiary nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

39. FEDERAL AVIATION ADMINISTRATION

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

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

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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.

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

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

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

11/03/10

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COMMUNITY OUTREACH, PUBLIC RELATIONS AND TRANSLATION SERVICES

**EXHIBIT A
SCOPE OF WORK**

Under the terms of this Agreement, Consultant will provide the following Services for the Voluntary Acquisition and Relocation Services (VARs) Program of the Community Noise Reduction Program (CNRP) for the City of Phoenix (City) Aviation Department (Aviation) north and west of Phoenix Sky Harbor International Airport.

This Agreement requires Consultant staff to conduct community outreach for VARs. The goal of VARs' outreach efforts is to develop strategies to increase the number of applicants as well as to create awareness of VARs. Consultant will also generate ideas and, upon written approval of the VARs Program Manager, execute those ideas to foster partnerships between the City and the community. This Agreement does not require Consultant to execute media relations and media buys on behalf of the City. All work will be conducted in cooperation and collaboration with designated Aviation staff.

A. COMMUNITY OUTREACH, PUBLIC RELATIONS AND TRANSLATION SERVICES

1. Community Outreach and Public Relations

- a. Assist the VARs Program Manager and designated Aviation staff in community outreach efforts to increase the number of program applicants, including developing outreach strategies for communication with VARs participants, and remaining CNRP residents, business owners and stakeholders, and assisting in the execution of outreach strategies, as requested.
- b. With guidance and direction from the VARs Program Manager and designated Aviation staff, Consultant will conduct outreach and provide information to businesses, schools, churches, non-profit organizations, community centers and other non-residential stakeholders in or near the VARs Program area regarding VARs' status and potential impacts on these entities, as requested. This portion of the scope of work will be on an on-call and as-needed basis.
- c. Create unique outreach opportunities to increase VARs applicants and awareness, as requested.
- d. Assist with land use observation outreach in VARs area, as requested.
- e. Assist designated Aviation staff with development of the VARs quarterly newsletter. This may include providing ideas for content and assisting with drafting newsletter copy, as requested.

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- f. Assist with other outreach activities as assigned by designated Aviation staff.

Deliverables

- a. Submit a monthly report to designated Aviation staff detailing completed/ongoing assignments and workload, as defined within this scope of work.
- b. Provide a monthly report recapping work provided and submit with monthly invoice.
- c. Attend status meetings at the CNRP office with designated Aviation staff, as requested.
- d. Provide community outreach/public information correspondence, posters, and/or reports, as requested.
- e. Develop and/or assist with execution of outreach plan with guidance from designated Aviation staff.
- f. Submit cost estimates of proposed work and staff plan prior to execution for specific requests as directed by the VARS Program Manager and designated Aviation staff.

2. Special Events/Community Meetings

- a. Set up and prepare event venue for VARS-hosted community meetings held every two (2) months. Tasks include room set-up/teardown, staffing a sign-in area, running a PowerPoint presentation, taking notes of all questions asked by attendees, and the answers provided by designated Aviation staff, and other City staff and contractors, if applicable.
- b. Assist designated Aviation staff in the coordination, staffing and participation in various community events, as requested.
- c. Set up, prepare and confirm the VARS booth, event venues, meeting facilities and display materials at various community events and meetings, as directed by designated Aviation staff. This may include paying meeting rental fees, and purchasing snacks and water, merchandise and other items as needed for event execution.
- d. Assist in the planning, coordination and execution of special events, such as ribbon-cutting ceremonies, open houses, and other VARS celebrations and related events, as directed by designated Aviation staff.

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- e. Assist with Spanish-language media coverage of VARS milestones and special events in coordination with the VARS Program Manager and designated Aviation staff, as needed.

Deliverables

- a. Submit cost estimates and staffing plan of proposed work prior to execution (for community events only).
- b. Submit event timeline and task schedule for participation in events.
- c. Maintain, set-up and create display materials and related promotional material and informational documents.
- d. Prepare a meeting recap and all questions and answers as shared during VARS-hosted monthly community meetings. Format and template will be provided by designated Aviation staff.
- e. Provide staff to assist with duties outlined above for VARS-hosted community meetings held approximately six (6) times per year.

3. Translation Services

- a. Provide English- and Spanish-language interpreters for VARS-hosted community meetings, events and one-on-one meetings that may include designated Aviation staff, and other City staff and contractors, if applicable, as requested.
- b. Provide professional English- and Spanish-language translation, in accordance with City requirements, to prepare documents, meeting recaps, newsletters, and other relevant VARS correspondence and materials.
- c. Assist designated Aviation staff with reviewing and editing all Spanish versions of the VARS quarterly newsletter.

Deliverables

- a. Provide one English/Spanish-language interpreter for VARS-hosted community meetings as requested. Headsets for these meetings will be provided by VARS.
- b. Provide translated documents as requested. Consultant will need to translate a question-and-answer document from VARS-hosted community meetings held every two (2) months. PowerPoint

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presentations (on various topics) may need to be translated every two (2) months. In addition, all VARS promotional material and informational documents and an occasional letter to residents must be translated.

- c. Translate quarterly newsletter.

4. Creative Services

- a. Provide graphic design assistance, particularly for brochures, invitations, etc., in a timely manner, as requested.
- b. Provide printing options and cost estimates to designated Aviation staff for various related promotional material and informational documents, as requested.
- c. Provide assistance in creating and printing photo badges for VARS contractors, as requested.
- d. Maintain and update a database/book of all VARS artwork, updating on a monthly basis, and given to designated Aviation staff at the end of each year.
- e. Provide all final, native artwork and non-artwork files to designated Aviation staff upon completion of all projects.

B. TRANSITION OF SERVICES

- 1. Work cooperatively with the VARS Program Manager, designated Aviation staff, and other City staff and 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, at no extra charge to the City. Phase-in training shall 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, promotional material and informational documents, and any other material created on behalf of the City.

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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 designated Aviation staff.

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EXHIBIT B
FEE SCHEDULE

Subject to Negotiations

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City of Phoenix

ADMINISTRATIVE REGULATION	A.R. NUMBER
	3.41 Revised
SUBJECT BUSINESS, CONFERENCE AND TRAINING TRAVEL AND RELATED EXPENSES	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



**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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- 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, 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:** For each insurance policy required by the insurance provisions of this Agreement, Consultant must provide to the City, within two (2) business days of receipt, notice if a policy is suspended, voided or cancelled for any reason. 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
SMALL BUSINESS UTILIZATION COMMITMENT**

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

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**EXHIBIT G
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
RACE- AND GENDER-NEUTRAL CONTRACT CLAUSE
FOR PROFESSIONAL SERVICES AGREEMENTS**

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 Code of Federal Regulations (CFR) Part 26. The official DBE database containing eligible DBE firms certified by the AZUCP can be accessed at: <http://www.azdbe.org>.

Commercially Useful Function means that a 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 firm must perform at least 30% of the total cost of its contract with its own work force 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 to pay for such goods or services.

Joint Venture (JV) 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 JV arrangement must hold DBE status with the City of Phoenix (City) or AZUCP. The JV 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.

DBE means a small business concern that has successfully completed the DBE certification process and been granted DBE status by the City or another AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

Outreach Efforts means the demonstrated efforts by a Submitter in fulfillment of the outreach requirements to solicit participation from interested and qualified DBEs and other small businesses. The Successful Submitter must document the identification of potential business opportunities for DBE and other small business participation, describe what efforts were undertaken to solicit for DBE and small business involvement, results of negotiations with potential DBEs and small businesses, and record the communications of the Successful Submitter's selections of DBE and small business participants.

Purchaser for purposes of this contract means the City.

Race- and Gender-Neutral (RGN) Measures means steps that result in DBE participation absent a Race- and Gender-Conscious Goal.

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

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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 means a business entity operated by any individual(s) regardless of race or gender with a personal net worth of less than \$1,320,000 and with gross receipts averaged over the businesses previous three fiscal years that are less than the limits stated in the U.S. Small Business Administration's - Small Business Size Standards, and are subject to further limitations as defined in 49 CFR Part 26.

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

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

Submitter is an individual, partnership, JV, 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. **DBE Participation** – For this business opportunity, the City has not established a race- and gender-conscious DBE participation goal. The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. After review of the market, there is 9.19% availability of certified firms. The City supports the use of race- and gender-neutral measures to facilitate participation by DBEs and other small businesses, and encourages submitters to subcontract portions of work that they might otherwise perform with their own forces.
- B. **Applicable Federal Regulations** – This contract is subject to the DBE Program requirements issued by the U.S. Department of Transportation (USDOT) as set forth in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this contract, the City is required to track and report DBE participation that occurs as a result of any procurement, JV, goods/services or other arrangement involving a DBE, creating an obligation for the Successful Submitter to provide all relevant information to allow such reporting to occur.
- C. **DBE Certification** – ONLY firms certified by the City or another AZUCP member and certified in the specified scopes of work shall be considered in calculating DBE participation resulting from RGN measures on this contract.

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- D. **Nondiscrimination Clause** – The City, as a recipient of federal 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 verbatim:

“The contractor, subrecipient, 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 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. **No documentation related to outreach efforts is required as part of the qualification-based submittal.**

SECTION IV. REQUIRED OUTREACH EFFORTS

- A. The City has implemented outreach requirements for this contract. Following the initial submittal, the Successful Submitter shall provide documentation to demonstrate its Outreach Efforts as detailed in Part B below. Failure to submit the required documentation of the Successful Submitter's outreach efforts (Attachments A and B) prior to entering negotiations will result in a determination by the City that the Successful Submitter is noncompliant with the Outreach Efforts requirements. A contract can only be negotiated with a Successful Submitter that is compliant with the Outreach Efforts requirements.
- B. **Submittal of Outreach Efforts Documentation** – *The following documents must be submitted to the Equal Opportunity Department (EOD) as a matter of compliance within 7 calendar days of being notified that the scope of work has been finalized and prior to entering final negotiations.*
1. ***Documentation of Outreach Efforts (Attachment A):*** List all subcontractors and suppliers contacted by the Successful Submitter in the preparation of its submittal. This information serves to document the following factors and shall be illustrative of the matters EOD will consider in determining whether the Successful Submitter demonstrated Outreach Efforts:
 - a) Identification of business opportunity;
 - b) Solicitation of participation;
 - c) Selection process; and
 - d) Communicating the selection outcomes to participants

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The Submitter should include supporting documentation to supplement Attachment A. This documentation should include the type and/or description of the potential opportunities identified for small business participation. A copy of the solicitation notice that was provided to interested small businesses. This notice may be in the form of a letter, phone calls, and attachment to an email, advertisements in newspapers, trade papers, or communications with chambers of commerce. The final aspect of demonstrated Outreach would provide communicating selection outcomes to potential participants. For all of the above, if a blast email or fax format is used, the documentation provided must reflect a listing of all email addresses or fax numbers to which the solicitation was sent and the date and time of the transmission. Additionally, if contacts are made by telephone, the Submitter must document the name of the person representing the Submitter and of the person representing the small business.

The Submitter must check the appropriate boxes to indicate all firms that will perform on the contract and whose participation is being proposed. The Submitter must ensure that the percentage and scope of work as part of this submission should be the same as the percentage and scope of work appearing on the *Letter of Intent* (LOI) that will be provided after successful completion of contract negotiations.

2. Small Business Utilization Commitment (Attachment B): The Successful Submitter must provide a signed affidavit indicating that the information submitted is true and correct as to the following:

- a) The firms indicated as selected in **Attachment A** will participate in the contract;
- b) The Successful Submitter will comply with Outreach Requirements for RGN Contracts for substitution;
- c) The Submitter understands and agrees that any and all changes or substitutions must be authorized by the Equal Opportunity Department prior to implementation; and
- d) The breakdown of participation by DBEs and small businesses is true and correct.

Failure to meet Outreach Requirements – EOD will make a determination, in writing, of the Successful Submitter's demonstration of Outreach Efforts. If a determination is made that the Successful Submitter failed to meet the stated Outreach Requirements, defined in Section IV, the City shall consider the submittal as noncompliant. Written notice shall be sent to the Successful Submitter by the responsible city department in instances where the Successful Submitter is found to have been noncompliant with the Outreach Requirements.

Administrative Reconsideration – In the event City determines the Successful Submitter failed to submit required documentation to meet the stated Outreach Requirements, an opportunity for reconsideration of this determination will be provided. This opportunity for reconsideration will seek to obtain clarification on documentation submitted and will not take new or additional documents into consideration.

If the Successful Submitter wishes to request reconsideration of the determination of noncompliance based on insufficient demonstration of Outreach Efforts, written notice must be submitted to the City within three (3) days of the City's noncompliance notification to the Successful Submitter. The request for reconsideration should be made to:

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

SECTION V. POST-AWARD COMPLIANCE REQUIREMENTS

A. **Letter of Intent (LOI) to Perform as a Subconsultant/Subcontractor/Supplier** – The Successful Submitter must provide an LOI form(s) – ***Attachment C-1***, which must be completed and signed by each firm that will perform on the contract and whose participation is proposed to be counted for DBE participation resulting from RGN measures on this contract.

B. **Subcontracting Commitment** – Copies of any executed contracts, procurements, purchase orders, subleases, JV, goods/services or other arrangement legalizing the agreement between the Successful Submitter and any DBE or small business will be required.

DBE subcontracts shall not be terminated, nor shall the scope of work be altered, without prior written notice and the approval of EOD. The amount of the subcontract shall also not be revised to a lower amount than was stated in the submitted 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.

C. **Relief From Proposed DBE Utilization** – After contract award, no relief from the proposed DBE utilization will be granted except in exceptional circumstances. Requests for relief from any or all of the DBE participation 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.

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- D. **DBE Substitutions** – 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 Successful Submitter must notify EOD in writing of the necessity to substitute a DBE and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a DBE must not occur before EOD's written approval is obtained.
- E. **Prompt Payment of Subcontractors** – In accordance with the Arizona Revised Statutes, 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 seven (7) calendar days of receipt of each progress payment from 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.

Any reduction of retention by the City to the Successful Submitter shall result in a corresponding reduction to subcontractors or suppliers who have performed satisfactory work. The prompt payment provisions of 49 CFR Part 26 also require the Successful Submitter to ensure the prompt and full payment of retainage 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.

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. If the Successful Submitter fails to make payments in accordance with these provisions, the City may take any one or more of the following actions, and the Successful Submitter agrees that the City may take such actions:

- Hold the Successful Submitter in default under this contract
- Withhold future payments, including retention, until proper payment has been made to subcontractors or suppliers in accordance with these provisions
- Reject all future bids from the Successful Submitter for a period not to exceed one (1) year from substantial completion date of this contract
- Terminate the contract

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.

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SECTION VI. RECORD & REPORTING REQUIREMENTS

- A. During the performance of the contract, the Successful Submitter shall keep such records as are necessary to document its subcontracting participation. The records shall be provided to EOD within 72 hours of notification by the City and at the completion of the contract. Reports shall be in such form, manner, and content as prescribed by the City. These record requests include, but are not limited to:
1. A complete listing of all subcontractors and suppliers on the project
 2. The scopes of work being performed by each subcontractor
 3. The dollar value of all subcontracting work, services, and procurements
 4. Copies of all executed subcontracts or invoices
- B. **Monthly Reporting** – During the course of the contract, an up-to-date “Subcontracting/Subconsulting/Procurement Report” (**Attachment D**) must be submitted to the City with each Request for Payment submitted by the Successful Submitter.
- C. **Closeout Reporting** – Nearing completion of the contract, the Successful Submitter shall submit a final “Subcontracting/Subconsultant/Procurement Report” (**Attachment D**) and “Certification of Payment to DBE Firms” (**Attachment E**) 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. The Equal Opportunity Department will authorize the processing of the Final Payment once all documents are received and verified.

ATTACHMENT A
DOCUMENTATION OF OUTREACH EFFORTS
PROFESSIONAL SERVICES CONTRACTS – SUBMIT PRIOR TO ENTERING CONTRACT NEGOTIATIONS

Project/Contract Name _____ Successful Submitter _____	Local Manager _____ Address _____ City/State/Zip _____ Email _____ Phone No _____ Fax _____
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Summary of Successful Submitter’s Outreach Activities relative to all businesses considered for this contract.
All supporting documentation of Outreach Efforts/Activities should be attached for review.

Firm	Business Status	Type of Agreement	Contract or Agreement Amount ²	DBE Participation as a % of total contract value	*Provide an explanation if firm was not selected
Name _____ Address _____ City/State/Zip _____ Email _____ Phone No _____ Fax _____	___ DBE ___ SBE ___ Small Business ___ Unknown	___ Subcontract ___ Supplier ___ Goods & Services ¹ Firm was not selected*	\$ _____ _____ N/A	_____ % _____ N/A	
Name _____ Address _____ City/State/Zip _____ Email _____ Phone No _____ Fax _____	___ DBE ___ SBE ___ Small Business ___ Unknown	___ Subcontract ___ Supplier ___ Goods & Services ¹ Firm was not selected*	\$ _____ _____ N/A	_____ % _____ N/A	
Name _____ Address _____ City/State/Zip _____ Email _____ Phone No _____ Fax _____	___ DBE ___ SBE ___ Small Business ___ Unknown	___ Subcontract ___ Supplier ___ Goods & Services ¹ Firm was not selected*	\$ _____ _____ N/A	_____ % _____ N/A	
Name _____ Address _____ City/State/Zip _____ Email _____ Phone No _____ Fax _____	___ DBE ___ SBE ___ Small Business ___ Unknown	___ Subcontract ___ Supplier ___ Goods & Services ¹ Firm was not selected*	\$ _____ _____ N/A	_____ % _____ N/A	
Name _____ Address _____ City/State/Zip _____ Email _____ Phone No _____ Fax _____	___ DBE ___ SBE ___ Small Business ___ Unknown	___ Subcontract ___ Supplier ___ Goods & Services ¹ Firm was not selected*	\$ _____ _____ N/A	_____ % _____ N/A	

¹ Allowable Goods and Services are those that are directly related to this contract.
² This column will be completed as appropriate after contract negotiations.

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

ATTACHMENT B
SMALL BUSINESS UTILIZATION COMMITMENT
PROFESSIONAL SERVICES CONTRACTS – SUBMIT PRIOR TO ENTERING CONTRACT NEGOTIATIONS

On behalf of the Successful Submitter, I certify under the penalty of perjury that the information submitted herein is true and correct:

- 1) The firms indicated as selected in **Attachment A** will participate in this contract;
- 2) The Successful Submitter will comply with the Outreach Requirements for Race- and Gender-Neutral Contracts for substitutions;
- 3) I understand and agree that any and all changes or substitutions must be authorized by the Equal Opportunity Department prior to implementation; and
- 4) The following breakdown of participation by DBEs and small businesses certified or self-identified is true and correct:

Proposed participation as subcontractor, subconsultant, or supplier as a percentage of this contract's value:

DBE _____ % Small Business _____ %

Name of Successful Submitter: _____

Printed Name Authorized Person: _____

Signature of Authorized Person: _____

ATTACHMENT C-1

**LETTER OF INTENT TO PERFORM AS A SUBCONSULTANT/SUBCONTRACTOR/SUPPLIER
(TO BE COMPLETED AND SIGNED BY THE DBE FIRM – SUBMIT AFTER CONTRACT NEGOTIATIONS)**

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 Small Business Enterprise (SBE) does not meet the requirements of this project as a DBE. Firms must be DBE certified and listed on the directory of certified DBE firms for the Arizona Unified Certification Program (AZUCP) and 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:

PART A: COMPLETE THIS PORTION IF THE SCOPE OF WORK WILL BE PERFORMED AT AN HOURLY RATE			
Description	Number of Hours	Hourly Price	Total Minimum Contract Amount
			\$
PART B: COMPLETE THIS PORTION IF THE SCOPE OF WORK <u>WILL NOT</u> BE PERFORMED AT AN HOURLY RATE			
NOTE: TRUCKING & HAULING MUST USE PART A ABOVE			
Description	Total Bid Amount		
	\$		

3. If trucking and hauling services are included in **Part A** above, the undersigned affirms the following:

# of trucks needed to perform the job _____	# of trucks owned by the DBE to be used _____
# of trucks to be leased from a DBE _____	# of trucks to be leased from a non-DBE _____

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)

ATTACHMENT C-2
LETTER OF INTENT TO PERFORM AS ASUBCONSULTANT/SUBCONTRACTOR/SUPPLIER
INSTRUCTIONS AND WORKSHEET

THE FOLLOWING IS BEING PROVIDED AS AN EXAMPLE FOR CALCULATING THE AMOUNTS THAT SHOULD BE ENTERED ONTO **ATTACHMENT C-1**. FOR ASSISTANCE, PLEASE CONTACT THE EQUAL OPPORTUNITY DEPARTMENT AT 602-495-0887.

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, Part A, and Section 3 of the LOI form (Attachment C-1) information regarding DBE trucking on the contract. The City allows 100 percent of the payments for services provided by DBE-owned and DBE-leased trucks to be counted. You can also count all of the charges for non-DBE-leased trucks, up to the number of DBE-owned and DBE-leased trucks on the project. The payments for non-DBE-owned or DBE-leased trucks above the number of DBE-owned and DBE-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
10	2	2
STEP FOUR	STEP FIVE	STEP SIX
Number of non-DBE leased trucks that can be counted in full (the number of trucks indicated here cannot exceed the sum of trucks in Step 2 and Step 3)	Number of non-DBE leased trucks that cannot be counted in full (total number of non-DBE leased trucks minus number of trucks in Step 4)	Fees and Commissions that will be retained by the DBE for the trucks in Step 5 that cannot be counted in full
4	2	Total cost being charged to Submitter minus leasing cost of each truck times # trucks in Step 5

ATTACHMENT E

CERTIFICATION OF FULL/FINAL PAYMENT TO DBE FIRMS

(TO BE COMPLETED BY THE SUCCESSFUL SUBMITTER AND DBE FIRM UPON COMPLETION OF WORK)

SUCCESSFUL SUBMITTER AFFIDAVIT:

The undersigned, having contracted as the Successful Submitter on Project # _____, hereby certifies that full payment (*including all retention*) 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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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

Odwyerpr.com

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 (A.R.S.) § 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.
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

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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
FEDERAL ACQUISITION REGULATION PART 31
QUICK REFERENCE GUIDE

The Quick Reference Guide provided is only a summary document and is not intended to be used without full application of the requirements put forth in Federal Acquisition Regulation (FAR) Part 31 and all other applicable federal, state and local standards, laws and regulations.

To find more information on FAR Part 31, go to: <https://www.acquisition.gov/far/>. Scroll down to Part 31 – 205.

The Quick Reference Guide provided below can be found in electronic format at <http://transportation.ky.gov/Audits/FAR%20Quick%20Reference.pdf>.

Item of Cost	Regulation	Explanation
Accounting	FAR 31.205-33	Allowable to the extent they are not associated with other unallowable costs such as bad debts.
Advance agreements	FAR 31.109	Advance agreements specifying allowability of special or unusual costs are allowable.
Advertising (see Selling and Marketing)		
Alcoholic beverages	FAR 31.205-51	Unallowable.
Allowability of costs	FAR 31.201-2	Costs are allowable only if reasonable, are allocable to intermediate or final cost objectives, are properly assigned/allocated to appropriate cost objectives, and are not prohibited by FAR Part 31 and/or Federal and State laws, regulations, and policies.
Audit services	FAR 31.205-33	Allowable to the extent they are not associated with other unallowable costs such as bad debts.
Bad debts	FAR 31.205-3	All expenses, including legal and collection costs, are unallowable.
Bid and Proposal Costs	FAR 31.205-18, CAS 420	B&P costs must be identified as a separate cost item and by individual project.. B&P costs must be accounted for in the same manner as contract (project) costs and are generally allowable.
Bonding	FAR 31.205-4	Allowable.
Bonus and incentive pay plans	FAR 31.205-6(f)(1), FAR 31.205-6(a)(6)(ii)(B)	Bonuses must be either by prior agreement or an established plan or policy followed so consistently as to imply an agreement to make such payment. Also, the basis for the bonus must be supported.

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Item of Cost	Regulation	Explanation
Business Combination Costs	FAR 31.205-49, FAR 31.205-52	Amortization, cost-of-money and depreciation are limited to the amounts allowable prior to the business combination.
CAS	FAR 9901.306	Any consultant with a contract of \$50,000,000 or more is subject to full CAS coverage. Otherwise, the consultant shall follow FAR 31.203(b)-(h).
Collection Costs	FAR 31.205-3	Unallowable.
Compensation limits	FAR 31.205-6(p)	Senior Executives' compensation are limited to the Benchmark Compensation Amount as determined by the Office of Federal Procurement Policy.
Compensation, Closely-Held firms	FAR 31.205-6(a)(6)(i)(A)	Compensation of certain individuals in closely-held firms requires special review and consideration.
Compensation, deferred	FAR 31.001, CAS 415	To be allowable, must be measured, allocated, and accounted for in compliance with CAS 415.
Compensation, Elements of	FAR 31.205-6	Compensation must be for work performed during the current year only, must be reasonable, and must be based upon an established compensation plan or practice followed so consistently as to imply an agreement to make the payment.
Contingency provisions/reserves	FAR 31.205-7	Generally unallowable.
Contract Termination - related costs	FAR 31.205-42	Certain costs are allowable.
Contributions or donations (to others)	FAR 31.205-8	Unallowable except for cost of participation in community service activities such as blood bank drives, charity drives, disaster assistance, etc.
Cost-of-Money	FAR 31.205-10, CAS 414, FAR 15.404-4	The average book value of the investment base is multiplied by the cost of money rate. The resultant value is divided by the allocation base units.
Costs are allowable	FAR 31.201-2	Costs are allowable if they are reasonable, allocable to Government contracts, compliant with GAAP and CAS, compliant with terms of the contract, and is not prohibited by any of the cost principles in FAR Part 31.
Costs must be allocable	FAR 31.201-4	Costs are allocable if they are incurred specifically for a contract, benefits both a contract and other work and can be distributed reasonably, and is necessary to the overall operation of the business.
Depreciation, use allowance	FAR 31.205-11	Depreciation may not exceed the book value of depreciation. Accelerated methods are not allowable.

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Item of Cost	Regulation	Explanation
Direct costs	FAR 31.202, FAR 31.203	Any cost that can be identified with a particular contract or project. Does not depend on whether the cost is reimbursable or not. Are unallowable as an overhead cost.
Directly associated costs	FAR 31.201-6, 48 CFR 9904.405-40	Unallowable costs and directly associated costs are to be excluded from billings, claims, or proposals for government contracts.
Directly associated salary costs	FAR 31.201-6(e)(2)	Salary expenses directly associated with unallowable costs are unallowable.
Economic planning costs	FAR 31.205-12	Allowable except for organization or reorganization costs.
Employee morale, health, welfare	FAR 31.205-13	Net employee morale, health, and welfare costs are allowable. Examples are in-house publications, health clinics, wellness/fitness, employee counseling services, and food and dormitory services. Food and dormitory services net costs are only allowable if operated on a break even basis
Employee Stock Ownership Plans (ESOP)	FAR 31.205-6(q), CAS 412, CAS 415	Contributions may not exceed the deductible limits of the IRC and are limited to the fair market value of the contributed stocks at the date the stock is transferred to the ESOP or to the fair market value of the stocks purchased with a cash contribution. When stocks are not publicly traded, an independent appraisal must be performed for valuation purposes.
Entertainment	FAR 31.205-14	All entertainment costs, such as shows, sporting events, picnics, parties, etc, are unallowable. These costs are not allowable under any other FAR.
Field Office Rates	FAR 31.203(f)	Consultant is responsible for reporting rates for field offices (offices not part of their main offices).
Fines, penalties	FAR 31.205-15	Unallowable except when incurred as a result of compliance with a contract or written instructions from the contracting officer.
Fringe benefits	FAR 31.205-6(m)	Allowable only when reasonable and required by law, employer-employee agreement, or an established policy of the consultant.
Gains and losses on disposition of property	FAR 31.205-16	Gains on the sale of assets must be removed from the overhead costs, losses must be added to the overhead costs. The exception is sale leaseback situations where these are limited.
Gifts	FAR 31.205-13	All costs of gifts are unallowable. 2 types of awards are allowable: (1) awards covered by FAR 31.205-6 and (2) awards made pursuant to an established plan or policy for recognition of employee achievements.

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Item of Cost	Regulation	Explanation
Goodwill	FAR 31.205-49	Unallowable.
Idle facility, idle capacity	FAR 31.205-17	Are unallowable with 2 exceptions.
Independent research and development	FAR 31.205-18	Generally allowable.
Insurance - Key Man Insurance	FAR 31.205-19, DCAM 7-509.3	Key Man Insurance is insurance on the life of key personnel where the beneficiaries are the company or its owners. Key Man Insurance is unallowable.
Insurance - Professional Liability	FAR 31.205-19	Allowable if allocable and reasonable. Costs of the consultant to correct their own defects, settle claims in lieu of correcting their own defects, or similar acts are unallowable.
Insurance - Re-Work	FAR 31.205-19	Cost of protecting against the costs of correcting own defects in materials and workmanship is unallowable.
Insurance - Self	FAR 31.205-19	Allowable up to the cost of equivalent coverage from an insurance company.
Interest	FAR 31.205-20	Interest on borrowings, bond discounts, costs of financing and refinancing capital, legal and professional fees paid for preparing a prospectus, costs of preparing and issuing stock rights, and directly associated costs are unallowable.
Labor relations	FAR 31.205-21	Allowable except for entertainment costs.
Legal costs	FAR 31.205-47	Legal costs for proceedings brought by a Federal, State or local government for violation of a law or regulation, costs of a dispute between consultants that are partners, in a joint venture, or similar shared interest arrangement; organization or reorganization activities; and collections are unallowable.
Lobbying	FAR 31.205-22	Lobbying and political activity costs are generally unallowable. Ex. - attempting to influence the outcomes of elections, contributions to political parties or organizations, influencing legislation, influencing employees of the executive branch of government.
Losses on other awards (contracts)	FAR 31.205-23	Unallowable.
Manufacturing & production engineering costs	FAR 31.205-25	Generally allowable.
Materials, supplies	FAR 31.205-26	Generally allowable.
Memberships, meetings and conferences, subscriptions, professional activity	FAR 31.205-1, FAR 31.205-14, FAR 31.205-43	Allowable when for trade, business, technical, or professional purposes.

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Item of Cost	Regulation	Explanation
Organization and reorganization costs	FAR 31.205-27	All costs including mergers, acquisitions, and raising capital are unallowable with the exception of activities intended to provided compensation.
Other business expenses	FAR 31.205-28	Such as registry and transfer charges from changes in ownership of securities, shareholders' meetings, normal proxy solicitations, shareholders' reports, regulatory required reports and forms, directors' and committee meetings, and other similar costs are allowable.
Overtime, shift premiums	FAR 31.205-6	Allowed as indirect cost if indirect in nature. To be indirect in nature, must be earned by an employee who is almost 100% indirect.
Patent costs	FAR 31.205-30	Unallowable unless required by government contract.
Pension plan changes	FAR 31.001, FAR 31.205-6(j), ERISA, IRC, CAS 412, CAS 413	Cost of changes are unallowable if discriminatory to the Government or not intended to be applied consistently to all employees under similar circumstances in the future. One time supplements not available to all employees are generally unallowable.
Pension plans	FAR 31.001, FAR 31.205-6(j), ERISA, IRC, CAS 412, CAS 413	Contributions are allowable if funded by the due date for filing the Federal income tax return and up to the net contribution required to be made pursuant to the requirements of the Plan. Discretionary contributions are unallowable.
Personal use of company vehicles	FAR 31.205-6(m)(2)	Unallowable regardless if reported as income or not.
Pre-award (pre-contract) costs	FAR 31.205-32	Unallowable as indirect costs as they are direct costs. May be included in the direct costs of the consultant.
Professional services	FAR 31.205-33	Allowable to the extent they are not associated with other unallowable costs such as bad debts.
Profits, losses on assets disposition	FAR 31.205-16	Gains on the sale of assets must be removed from the overhead costs, losses must be added to the overhead costs. The exception is sale leaseback situations where these are limited.
Promotional material/Brochures	FAR 31.205-1	Unallowable.

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Item of Cost	Regulation	Explanation
Public relations	FAR 31.205-1	Unallowable costs include (1) material, motion pictures, videotapes, brochures, handouts, and magazines designed to elicit favorable attention to the consultant; (2) membership in civic and community organizations; (3) souvenirs, models, imprinted clothing, buttons and other mementos given to customers or the public; and (4) sponsoring nontechnical meetings, symposia, seminars, and other special events.
Publication and printing costs	FAR 31.205-13, FAR 31.205-21	Generally allowable.
Reasonableness	FAR 31.201-2, FAR 31.201-3	A cost is reasonable if it is necessary and ordinary. See the regulations for further clarification
Reconversion costs	FAR 31.205-31	Generally allowable.
Recordkeeping, Burden of proof	FAR 31.201-2(d)	Consultants must maintain adequate records to demonstrate that costs have been incurred and are allocable to government contracts.
Recreation	FAR 31.205-13	Unallowable except for the costs of company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.
Recruiting	FAR 31.205-34	Allowable with certain limitations.
Relocation	FAR 31.205-35	Certain costs of relocating permanent employees are allowable if meet certain criteria.
Rent/Lease - Capital Lease	FAR 31.205-36	Capital leases are to be depreciated or amortized by a specific method. There are 4 criteria to be classified as a capital lease per FAS-13 (See UAAC, pg. 70).
Rent/Lease - Common Control	FAR 31.205-36	Rent for property between any divisions, subsidiaries, or organizations under common control are allowable to the extent they do not exceed the normal costs of ownership. Common control is defined by FASB Statement No. 57 (see UAAC pg. 70). Common control is present when 1 or more persons or family members such a husband and wife, parent and child, siblings, etc. can influence decision making of all companies involved.
Rent/Lease - Sale and Leaseback	FAR 31.205-36	Sale and leaseback rental costs are allowable only up to the amount the consultant would be allowed if the consultant retained title. Allowable costs are computed based upon the net book value of the asset on the date the consultant became a lessee of the property adjusted for any gain or loss.

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Item of Cost	Regulation	Explanation
Retainer agreements	FAR 31.205-33	Allowable but must be supported by evidence that the services are necessary and customary, the fee is reasonable in comparison with maintaining an in-house capability, and the level of past services justifies the amount of the retainer fees.
Royalties, use of patents, copyrights	FAR 31.205-37	Allowable with certain limitations.
Selling and marketing (or advertising)	FAR 31.205-1, FAR 31.205-38	Generally direct selling (characterized by person-to-person contact) is allowable. Brokerage fees, commissions, and similar costs are allowable only when paid to bona fide employees or established commercial or selling agencies of the consultant. Generally, the only allowable advertising cost is help wanted ads (in accordance with FAR 31.205-34). Only certain image enhancement and public relations costs (see Public relations) are allowable. Long-range marketing costs are allowable when associated with long-range management planning.
Service and warranty costs	FAR 31.205-39	Allowable when not inconsistent with the terms of the contract.
Severance pay	FAR 31.205-6(g)	Is allowable if payment is required by law, an employer-employee agreement, an established policy that is an implied agreement on the consultant's part, or the circumstances of the particular employment. Abnormal severance pay, associated with mass termination of employees, is unallowable to the extent it exceeds normal severance pay.
Social activities	FAR 31.205-14	Unallowable.
Souvenirs/Imprinted clothing provided to public	FAR 31.205-1	Unallowable.
Special tooling and test equipment	FAR 31.205-40	Only allowable as a direct cost of the contract.
Supplemental Benefit: Executive Severance	FAR 31.205-6(g)	Must be reasonable regardless of if based on an executive employment contract.
Supplemental Benefit: Golden Handcuffs	FAR 31.205-6(l)(2)	Compensation contingent on an employee remaining with the organization after an actual or prospective change in management control is unallowable.
Supplemental Benefit: Golden Parachute	FAR 31.603(b)(11)	Payments made under a contract to key personnel in the event of a change in ownership or control of the consultant are unallowable.

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Item of Cost	Regulation	Explanation
Supplemental Benefit: Long-Term Incentive Plan (LTI)	FAR 31.205-6(i)	The most common LTIs are based on stock options, which are unallowable.
Supplemental Benefit: Supplemental Executive Retirement Plans (SERP) or ERISA Excess Plans	FAR 31.205-6, CAS 9904.412, ERISA	Unallowable unless represents a separate pension plan and benefits are payable for life at the option of the employee.
Taxes	FAR 31.205-41	Federal income and excise taxes are unallowable.
Total-Hour Accounting System	DCAAP 7641.90 Chapter 2 - 302.1(5)	All hours worked by all employees must be recorded. An adjustment may be made if it is questionable that all hours are not being recorded.
Trade show expenses and labor	FAR 31.205-1	Generally unallowable except as described in selling and marketing.
Training, education	FAR 31.205-44	Are allowable with limitations.
Travel	FAR 31.205-46	Travel costs are allowable either as indirect or direct if the following information is documented: Date and Place, Purpose of Trip, name of personnel or relationship to the consultant, and for transportation a log must be maintained. Transportation costs are reimburseable only up to FTR rates.

See the specific guidance and/or the Uniform Audit and Accounting Guide for further clarification.

Abbreviations and Links

- CAS - Cost Accounting Standards (48 CFR 99)
- CFR - Code of Federal Regulations
- DCAA - Defense Contract Audit Agency
- DCAAP - DCAA Pamphlet
- DCAM - DCAA Contract Audit Manual
- ERISA - Employee Retirement Income Security Act
- FAR - Federal Acquisition Regulations (48 CFR)
- FASB - Financial Accounting Standards Board
- FTR - Federal Travel Regulations
- GAAP - Generally Accepted Accounting Principles
- IRC - Internal Revenue Code
- UAAC - Uniform Audit and Accounting Guide
- USC - United States Code

**EXHIBIT N
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

**CITY OF PHOENIX
Aviation Department**

COMMUNITY OUTREACH, PUBLIC RELATIONS AND TRANSLATION SERVICES

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 _____