



**CITY OF PHOENIX  
STREET TRANSPORTATION DEPARTMENT**

**INTERACTIVE DIGITAL KIOSKS  
TECHNOLOGY PROFESSIONAL SERVICES CONTRACT**

**REQUEST FOR PROPOSAL (RFP)  
RFP-63-2213**



## SCHEDULE OF ACTIVITIES

CITY OF PHOENIX

ACTIVITY (All times are local Phoenix time)	DATE	DETAILS
Issue RFP	January 24, 2022	<a href="https://www.phoenix.gov/procure">https://www.phoenix.gov/procure</a> click on the "solicitations" button
Pre-Proposal Meeting at 11:00 a.m.	January 26, 2022	Via WebEx (link): <a href="https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=mada6cd721886f27ca1c23aaf4f8be12c">https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=mada6cd721886f27ca1c23aaf4f8be12c</a>  <b>Join by phone</b> +1-415-655-0001 US Toll <a href="#">Global call-in numbers</a>
Submittal of Written Questions by 5:00 p.m.	February 1, 2022	Email to: <a href="mailto:dana.garr@phoenix.gov">dana.garr@phoenix.gov</a>
City Responses to Written Questions	February 4, 2022	By close of business
Proposal Submittal by 11:59 p.m.	February 18, 2022	<b>EMAIL SUBMITTAL:</b> <a href="mailto:dana.garr@phoenix.gov">dana.garr@phoenix.gov</a>  NOTE: Only an electronic copy is required (no paper copies)
Award Recommendation to Phoenix City Council	April 20, 2022	<a href="https://solicitations.phoenix.gov/awards">https://solicitations.phoenix.gov/awards</a>

**Submit proposals and requests for alternate formats to:**  
Dana Garr, Contracts Specialist II, Lead (Procurement Officer)  
City of Phoenix Street Transportation Department  
200 W. Washington St., 5<sup>th</sup> Floor  
Phoenix, Arizona 85003  
Telephone: (602) 495-2461 (7-1-1 Friendly)

	<b>SCHEDULE OF ACTIVITIES</b>	<b>CITY OF PHOENIX</b>
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dana.garr@phoenix.gov  
Date posted on website (issue Date): January 24, 2022

This RFP does not commit the City to award any agreement.  
All dates subject to change.



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### RFP PROCESS

#### 1. DESCRIPTION – STATEMENT OF NEED:

**1.1** The City of Phoenix Street Transportation Department invites sealed proposals from qualified firms to install, operate and maintain Interactive Digital “Smart” Kiosks (kiosks) throughout the downtown Phoenix area at no cost to the City. Kiosks requested must be installed and operational by February 1, 2023 in accordance with the specifications and provisions contained herein. Any resulting contract is expected to commence on or about May 1, 2022.

#### 2. MINIMUM QUALIFICATIONS:

**2.1** Each Offeror must demonstrate in its proposal that it meets the minimum qualifications, or its proposal will be disqualified as non-responsive.

**2.1.1** Reputation. The Proposer shall demonstrate that they have been in the Digital Kiosk business for a minimum of three years. The Offeror’s normal business activity during the past three years will have been for providing the goods or services listed in this solicitation. (This information must be provided in the submittal including years in the business and customer references.)

**2.1.2** History of Performance. The Proposer shall have a minimum of 100 interactive kiosks installed and operational in North American markets.

**2.1.3** Relevant Experience. The Proposer is currently involved as a prime Contractor with at least two municipal government entities in the United States.

**2.1.4** Financial Position. The applicant shall demonstrate access to, or availability of, liquid assets, unencumbered real assets, lines of credit, and other financial means sufficient to meet the estimated cash flow requirements of the contract.

**2.1.5** Equipment. Offeror will be an owner/operator to ensure kiosks are in full working order and demonstrate that, based on known commitment, they will be available for use in the proposed contract.

**2.1.6** Personnel Capabilities. The proposer shall provide suitably qualified personnel who should the experience requirements specified



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under evaluation criteria. For each position, the applicant will supply information on key personnel and support staff.

2.1.7 Insurance. Upon notification that Offeror is subject to award, the Offeror will have 10 business days to submit a complete certificate of insurance in the minimum amounts and coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

2.1.8 Schedule. The Offeror will have 30 business days from contract award to complete and submit the final work schedule for Offeror identified responsibilities per the Scope of Work upon notification that Offeror is subject to award. Offeror is required to include in the work schedule the number of workers, for each location, they employ to complete the services as specified in scope of work.

### 3. AGREEMENT TERM AND CONTRACTUAL RELATIONSHIP:

3.1 Offerors are responsible for reading the attached agreement and submitting any questions about it in accordance with the process listed in this agreement. By submitting a proposal, each Offeror agrees it will be bound by the agreement. The City anticipates an initial five-year term, with one (1) five-year extension option. Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence of any of the following:

- Reaching the end of the term, including any extensions
- Termination pursuant to the provisions of the Agreement

3.2 This RFP does not commit the City to award any agreement.

3.3 All dates subject to change. The City reserves the right to change dates and/or locations as necessary, and the City does not always hold a Pre-Offer Conference or Site visit.

### 4. PRE-PROPOSAL MEETING:

4.1 Offerors may attend the pre-proposal meeting on the date and at the time listed in this solicitation. Please register for this meeting by emailing the procurement officer on the front page. Email to: [dana.garr@phoenix.gov](mailto:dana.garr@phoenix.gov)

### 5. SCOPE OF WORK AND SPECIAL TERMS AND CONDITIONS:



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**5.1** Offeror will provide services that will be in accordance with the Scope of Work as set forth in *Exhibit C*, which may be supplemented with additional detail from time to time during the term of the Agreement, and that are satisfactory to the City. In performing these services, Offeror will also specifically comply with the applicable Special Terms and Conditions that are set forth in *Exhibit E*. Offeror will provide progress reports to the City per a mutually agreed-upon schedule.

### **6. CITY'S OFFEROR SELF-REGISTRATION AND NOTIFICATION:**

**6.1** Offerors must be registered as an Offeror in the City's eProcurement Self-Registration System at <https://www.phoenix.gov/financesite/Pages/EProc-help.aspx> in order to respond to solicitations and access procurement information. The City may, at its sole discretion, reject any offer from an Offeror who has not registered in the City's eProcurement system.

### **7. PREPARATION OF OFFER:**

**7.1.** All forms provided must be completed and submitted with your offer. The signed and completed Solicitation Disclosure form must be included or your offer may be deemed non-responsive.

**7.2.** It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of your offer must be initialed in original ink by the authorized person signing the offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not responsible for Offeror's errors or omissions.

**7.3.** All time periods stated as number of days will be calendar days.

**7.4.** It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:

**7.4.1.** Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.

**7.4.2.** Study and carefully correlate Offeror's knowledge and observations with the solicitation and other related data.



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7.4.3. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which Offeror has discovered in or between the solicitation and such other related documents.

7.5. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.

### 8. EXCEPTIONS:

8.1 Offeror must not take any exceptions to any terms, conditions or material requirements of this solicitation. Offers submitted with exceptions will be deemed non-responsive and disqualified from further consideration. Offerors must conform to all the requirements specified in the solicitation. The City encourages Offerors to ask the contracts specialist questions rather than including exceptions in their Offer.

### 9. INQUIRIES:

9.1 All questions that arise relating to this solicitation should be directed to the contracts specialist on the solicitation cover page: Email to: [dana.garr@phoenix.gov](mailto:dana.garr@phoenix.gov) by the due date indicated on the Schedule of Events. The City will not consider questions received after the deadline.

9.2 To be considered, written inquiries must be received by email to the address on the cover page by the submittal time. Inquiries received will then be answered in an addendum and posted to the Solicitation website at: <https://solicitations.phoenix.gov>.

9.3 No informal contact initiated by Offerors on the proposed service will be allowed with members of City's staff from date of distribution of this solicitation until after the closing date and time for the submission of offers. All questions concerning or issues related to this solicitation must be presented in writing to the contracts specialist.

### 10. ADDENDA:

10.1 The City of Phoenix will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix regarding this



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solicitation including the offering instructions, plans, drawings, specifications, or contract documents. Any changes to the plans, drawings and specifications will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addendum by signing and returning the addenda document with the offer submittal or the Offer may be considered non-responsive at the discretion of the City.

### 11. LICENSES:

**11.1** If required by law for the operation of the business or work related to this Offer, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

### 12. CERTIFICATION:

**12.1** By signature in the offer section of the Affidavit page, Offeror certifies:

- The submission of the offer did not involve collusion or other anti-competitive practices.
- The Offeror must not discriminate against any employee, or applicant for employment in violation of Federal or State Law. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

### 13. SUBMISSION OF OFFER:

**13.1** Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events on the cover page. Late offers will not be considered. The prevailing clock will be the Department clock. Offers must be submitted in .pdf format and the following information should be noted in the proposal:

- Offeror's Name
- Offeror's Address (as shown on the Affidavit Page)
- Offeror's Email
- Solicitation Number
- Solicitation Title
- Offeror Number

**13.2** All offers must be typewritten. Include an electronic copy as indicated in



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the Submittal section. Responses are kept securely filed until the close date has arrived, at which time only those with authorization can open and review submitted offers.

**14. WITHDRAWAL OF OFFER:**

**14.1** At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the offer by submitting a request in writing and signed by a duly authorized representative. Facsimiles, telegraphic or mailgram withdrawals will not be considered. Withdrawals may not be made after the proposal due date.

**15. OFFER RESULTS:**

**15.1** Offers will be opened on the offer due date, time, and location indicated in the Schedule of Events. Offers and other information received in response to the solicitation will be shown only to authorized City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Offers are not available for public inspection until after the City has posted the award recommendation on the City’s website.

**16. AWARD OF CONTRACT:**

Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service contained in this solicitation and who have demonstrated the ability to perform the required service in an acceptable manner.

**16.1** Overview of criteria that will be considered by the City include the following: (additional details below chart)

<b>EXPERIENCE AND QUALIFICATIONS EVALUATION CRITERIA</b>	<b>POINTS</b>
<p><b>Method of Approach:</b>  Approach and schedule for fabricating, permitting, installing, making operational, and maintaining the kiosks. How Offeror intends to deploy the kiosks from contract execution through ongoing maintenance and operations over the term of the contract. Includes details for implementation milestones, specific installation steps, configuration and integration of data management system, training plan, marketing and education strategies, and concept for launch day. Includes Offeror’s understanding of the contracting process and approach to working with the City to install the kiosks including the permitting process. (see 16.2)</p>	<b>250</b>



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<p><b>Revenue Sharing Plan</b> Percentage of gross advertising revenues [generated from the kiosk advertising content] to be shared with the City including anticipated and guaranteed annual income. Consideration will be given for the completeness of a Pro Forma outlining Offerors investment and anticipated offsetting and projected revenue to be provided to the City.</p> <p>Pro forma should include proposed investment and financial return to the City. Investment and financial return reflect the revenues generated from commissions, sponsorships, advertising revenue, other revenue and commission structures, Capital Investment and Operational Investments. Proposals will be evaluated on the overall financial return to the City. (see 16.3)</p>	<p><b>250</b></p>
<p><b>Specifications and Technical Abilities:</b> Physical properties of the kiosk(s): equipment size, design, shelter/shading elements, appearance, durability, screen size and aesthetic appearance. Explain why Offeror’s kiosk(s) will be the most advantageous to the City.</p> <p>Technical features and amenities of the kiosk including but not limited to: Wayfinding, Marketing, Events, Public Service Announcements, Public Transportation Services, and Emergency communication. Specific references should be made to the features and amenities required by the City.</p> <p>Capability to add new applications or modify existing applications. Explains customer experience and full capabilities of Offeror’s kiosk. (see 16.4)</p>	<p><b>200</b></p>
<p><b>Qualifications and Experience</b> Describe the experience and qualifications of the Offeror and of the specific project team to be assigned to providing kiosk implementation and support for similar scale projects. For each key person identified, list their length of time with the firm. List each key person’s role in the projects provided. If a project selected for a key person is the same as one selected for the firm, provide just the project name and the role of the key person. For each project listed, provide:</p> <ul style="list-style-type: none"><li>• Description of the project including scope and project owner</li><li>• Role of the team or team member and explain how this relates to the services being solicited</li></ul>	<p><b>125</b></p>



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<ul style="list-style-type: none"> <li>• Project’s start date and completion date</li> <li>• (see 16.5)</li> </ul>	
<p><b>Content Management System (CMS) and Communications System</b>            Capabilities and ease-of-use for the system. Features support maintenance, remote programming, revenue tracking, and reporting tools to brief City staff on the usage of the system and to promote efficient management of the kiosk. Screen shot examples that show what to expect from proposed system. Capability to re-establish wireless communications in the event of a failure.</p> <p>Ability to incorporate data feeds from multiple CMSs, social media streams, Application Programming Interface (APIs) including: Phoenix.gov, ESRI, 311, and calendar events from numerous sources. (see 16.6)</p>	<p><b>75</b></p>
<p><b>Value Added Services</b>            Services that show innovation and uniqueness specific to Offeror’s kiosk. Identifies specific enhancements proposed for Phoenix. (see 16.7)</p>	<p><b>75</b></p>
<p><b>Reference Checks:</b>            Maximum points will be awarded to firms with no reported or identified adverse issues with deployments in other cities. (see 16.8)</p>	<p><b>25</b></p>
<p><b>Total Possible Points</b></p>	<p><b>1,000</b></p>

**16.2 Method of Approach:** The approach and schedule should define how the Offeror intends to manage fabricating, permitting, installing, making operational, and maintaining the kiosks over the term of the contract. The response should include, at a minimum:

- Implementation schedule – timeline of milestones from contract execution through permitting, delivery, installation, integration of data & communication system, kiosk launch and ongoing maintenance.
- Installation steps – responsible parties and specific installation plans for proposed kiosks and equipment including permitting, kiosk assembly and mounting and programming software.
- Operations and Maintenance – ongoing maintenance, life expectancy, in-person inspection frequency, cleaning/sanitizing schedule, etc.



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- Training plan – plans for providing training for operation, programming, and management of back-end software.
- Marketing and education – plan for initial marketing, education, rollout and launch of kiosks.

**16.3 Revenue Sharing Plan:** Percentage of gross advertising revenues [generated from the kiosk advertising content] to be shared with the City including estimated annual income to the City. Offeror should also propose a minimum annual guarantee payment to the City.

**16.4 Specifications and Technical Abilities:** The physical features and technical capabilities of the kiosks.

Specifications include: screen legibility and size, housing dimensions, building footprint, shape, color, shelter/shading element, material, aesthetic appearance, environmental sustainability, branding, signage, ADA compliance, mounting hardware, solar panel capabilities, audio volume control, design and durability, weather-resistant preventive measures, modifications for extreme heat and sun glare, anti-theft mechanisms, vandal-resistant construction, alarms and cameras.

Technical Capabilities include: real-time information, operating system functions, back-office software, status reporting, pedestrian counting function, customer input and feedback interface, communications features, audio/visual properties, camera recording, interoperability with other software, multi-lingual capabilities, mobile phone compatibility, zooming capabilities and overall technical functionality.

This section also includes applications and features such as: wayfinding, public transportation, cultural and sporting events, nearby points of interest, emergency communication, weather, retail, advertising entertainment, City/County/State/Federal services, surveying/polling, and hyper-local information.

Be as specific as you can so that the City can understand the full capabilities of the kiosk. Must include product brochures or pictures.

**16.5 Qualifications and Experience:** Include an organizational chart showing key personnel, current position, licenses and certifications, and assigned role for implementation, start-up, and ongoing support. Identify the lead’s principal office and the home office of key staff that will be assigned to this project.

**16.6 Content Management System / Communication System:** Please



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describe the full features of the web-based tools and reporting systems to promote effective and efficient operation and revenue management of the kiosks. Include how proposed Communication system interacts with the public, and how the City can add/revise/delete information from our systems. Explain safety measures programmed for cyber security, backup systems, internal alarms, etc.

**16.7 Value Added Services [Approaches to innovation and uniqueness]:** Description of innovative or unique features, specific to the proposed kiosk which sets the Offeror's kiosk apart from others. This could include, but is not limited to, add-on features, unique interface components, dual front and back screens, personalized applications, or special branding capabilities for the City of Phoenix. In short, all services/features beyond what is required.

**16.8 Reference Checks:** Please provide an honest and brief statement on your firm's reputation within the industry as it pertains to customer service, product reliability or any other issues associated with your delivery of services within another jurisdiction. If there are no adverse issues, state this in your response. Your response should include legal and non-legal investigations or actions.

### 17. CITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST:

**17.1** The City reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the offer submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Offeror submitting an offer herein waives any right to object now or at any future time, before anybody or agency, including but not limited to, the City Council of the City of Phoenix or any court.

### 18. SOLICITATION TRANSPARENCY POLICY:

**18.1** Commencing on the date and time a solicitation is published, potential or actual offerors or respondents(including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.



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- 18.2** As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff who is not involved in the selection process.
- 18.3** Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.
- 18.4** With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.
- 18.5** This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. **PROPOSERS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Proposer may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.
- 18.6** “To discuss” means any contact by the proposer, regardless of whether the City responds to the contact. Offerors that violate this policy shall be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

### **19. PROTEST PROCESS:**

- 19.1** Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent



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alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City's best interests to set new deadlines, amend the solicitation, cancel or re-bid.

- 19.2** Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.
- 19.3** Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.
- 19.4** Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations to award the contract(s) to a particular Offeror on the City's website. Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City's full and final discretion.
- 19.5** All protests will be in writing, filed with the Procurement Officer identified in the solicitation, and include the following:
- a. Identification of the solicitation number;
  - b. The name, address and telephone number of the protester
  - c. A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
  - d. The form of relief requested; and
  - e. The signature of the protester or its authorized representative.
- 19.6** The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City's Procurement Code, (Phoenix City Code, Ch. 43), and administrative regulations and any protests or appeals not submitted within the time requirements will not be considered.

## **20. PUBLIC RECORD:**

- 20.1** All Offers submitted in response to this invitation will become the property



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of the City and become a matter of public record available for review pursuant to Arizona State law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may request specific information contained within its Offer is treated by the Procurement Officer as confidential provided the Offeror clearly labels the information “confidential.” To the extent necessary for the evaluation process, information marked as “confidential” will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Offerors as “confidential” available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify an Offeror in writing of any request to view any portion of its Offer marked “confidential.” The Offeror will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

### **21. LATE OFFERS:**

**21.1** Late Offers must be rejected, except for good cause. If a late Offer is submitted, the Department will document the date and time of the submittal of the late Offer, keep the Offer and notify the Offeror that its Offer was disqualified for being a late Offer.

### **22. RIGHT TO DISQUALIFY:**

**22.1** The City reserves the right to disqualify any Offeror who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offeror submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Offeror waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Offeror.



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### 23. SITE INSPECTION:

**23.1** Offeror agrees that submission of an offer indicates that the Offeror has either A) Made a site inspection and is aware of all conditions that may affect performance and offer prices; or B) Has not made a site inspection, but regardless is either aware of all conditions that may affect performance and offer revenues or prices or accepts the risk and understands the scope of its binding Offer.

### 24. STATEMENT OF BONDING ABILITY:

**24.1** Offerors must submit a letter from a bonding or insurance company stating that the Offeror can qualify for and procure the performance and/or payment surety required in this solicitation. Submittals received without the required statement of ability to secure a performance or payment surety may be considered as non-responsive. Offerors anticipating the submittal of a cash surety in lieu of a bond should submit a statement notifying the City.

### 25. PERFORMANCE BOND AND PAYMENT BOND:

**25.1 PERFORMANCE BOND:** A Performance Surety in the amount of 10% of the total contract amount shall be provided by the Contractor immediately after notice of award. The City of Phoenix will not issue a written purchase order or give notice to proceed in any form until the surety is received by the Procurement Officer. The performance surety must be in the form of a bond, letter of credit, Certificate of Deposit, cashier's check, certified check or money order. Personal or company checks are not acceptable unless certified. If surety is in the form of a bond, the company issuing the surety must be authorized by the Insurance Department of Arizona to transact business in the State of Arizona or be named on the approved listing of non-admitted companies. If a Letter of Credit, the City only accepts from banks rated "A" or better by Moody's or Standard & Poor. Banks customarily maintain a standard format for Letters of Credit; the bank and format will need to be submitted to the City. Approvals from several departments may be required before final acceptance of the letter of credit or bond; this process may take up to 15 days. A Certificate of Deposit (CD) issued by a local Phoenix bank may also be used as a form of surety, provided that the CD is issued jointly in the name of the City of Phoenix and the Contractor, and that the Contractor endorses the CD over to the City at the beginning of the contract period. Interest earnings from the CD can be retained by the Contractor.



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**25.2 PAYMENT BOND:** The City of Phoenix will not issue a written purchase order or give notice to proceed in any form until the surety is received by the Purchasing Division. Required by the Contractor within 7 days after notice of award. The payment surety must be in the form of a bond, cashier's check, certified check or money order. Personal or company checks are not acceptable unless certified. If the surety is in the form of a bond, the company issuing the surety must be authorized by the Insurance Department of Arizona to transact business in the State of Arizona or be named on the approved listing of non-admitted companies. A Certificate of Deposit (CD) issued by a local Phoenix bank may also be used as a form of surety provided that the CD is issued jointly in the name of the City of Phoenix and the Contractor and that the Contractor endorses the CD over to the City at the beginning of the contract period. Interest earnings from the CD can be retained by the Contractor.

**25.2.1.** If the surety is submitted in a form other than a bond, the City will retain the surety for a minimum of ninety (90) days after completion of the project and final acceptance by the City.

### **26. CONTRACT AWARD:**

**26.1** The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award.

### **27. EVALUATION OF COMPETITIVE OFFERS:**

**27.1** The City will use its discretion in applying the following processes to this solicitation. Any ties in scoring will be resolved with a best and final price request and the lowest price will prevail.

### **28. DETERMINING RESPONSIVENESS AND RESPONSIBILITY:**

**28.1** Offers will be reviewed for documentation of minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

**28.2** Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers (as the case may be) will render an Offer nonresponsive.



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**28.3** Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and an Offer that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Offeror remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so in writing, the City may determine the Offer to be nonresponsive.

**28.4** Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the Offeror, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible Offeror. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

**28.5** The Procurement Officer, in consultation with legal counsel, will review each Offer to determine if the Offeror is responsible. The City's determination as to whether an Offeror is responsible will be based on the information furnished by the Offeror, interviews (if any), any information at the City's request, information in any best and final offer, and information received from Offeror's references, including information about Offeror's history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the Solicitation will not be made until any necessary investigation, which each Offeror agrees to permit by submitting its Offer, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.

**28.6** The Offeror's unreasonable failure to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror.

### **29. DETAILED EVALUATION OF OFFERS AND DETERMINATION OF COMPETITIVE RANGE:**

**29.1** During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price, which will be added to the overall consensus score. The overall consensus scores will determine the Offerors' rankings and which Offers are within the Competitive Range, when appropriate.



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### **30. OFFERS NOT WITHIN THE COMPETITIVE RANGE:**

**30.1** The City may notify Offerors of Offers that the City determined are not in the Competitive Range.

### **31. DISCUSSIONS WITH OFFERORS IN THE COMPETITIVE RANGE:**

**31.1** The City will notify each Offeror whose Offer is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Offeror. Each Offeror so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Offer. The Offerors in the competitive range may be required to provide a demonstration of their product.

**31.2** Demonstrations - Offerors in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Phoenix. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).

**31.3** If an Offer in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Offeror to remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so, the City may determine the Offer is nonresponsive, and the City may revoke its determination that the Offer is in the Competitive Range.

**31.4** To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Offeror about other Offers received in response to this solicitation. During discussions with Offerors in the Competitive Range, the City will not give Offerors specific prices or specific financial requirements that Offerors must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Offerors will not be told of their relative rankings before Contract award.



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### **32. BEST AND FINAL OFFERS (BAFO):**

- 32.1** A BAFO is an option available for negotiations. Each Offeror in the Competitive Range, which is determined in the City's sole discretion, may be afforded the opportunity to amend its Offer and make one BAFO.
- 32.2** If an Offeror's BAFO modifies its initial Offer, the modifications must be identified in the BAFO. The City will evaluate BAFOs based on the same requirements and criteria applicable to initial Offers. The City will adjust appropriately the initial scores for criteria that have been affected by Offer modifications made by a BAFO. Based on the criteria defined in the solicitation as weighted, the City will then perform final scoring and prepare final rankings.
- 32.3** The Evaluation Panel will recommend the Offer that is the best value and most advantageous to the City based on the evaluation criteria.
- 32.4** The City reserves the right to make an award to an Offeror whose Offer is the highest rated, best value, and most advantageous to the City based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.



**ATTACHMENT A – AGREEMENT**

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**ATTACHMENT A – PROFESSIONAL SERVICES AGREEMENT**

**PROFESSIONAL SERVICES**

**BETWEEN**

**THE CITY OF PHOENIX**

**AND**

**CONTRACTOR**

**City of Phoenix Agreement No.: \_\_\_\_\_**

**Dana Garr, Contracts Specialist II Team Lead  
Street Transportation Department  
200 W. Washington St., 5<sup>th</sup> Floor  
Phoenix, AZ 85003  
(602) 495-2461**

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This **AGREEMENT** (the “Agreement”) is made and entered into May 1, 2022 (the “Effective Date”), or as of the City Clerk Attests, whichever is later, by and between the City of Phoenix, a municipal corporation of the State of Arizona (hereinafter referred to as “**City**”) and Contractor (hereinafter referred to as “**Contractor**”).

**RECITALS**

**WHEREAS**, the City Manager of the City of Phoenix, Arizona, is authorized by the provisions of the City Charter to execute Agreements for technology products and professional services; and

**WHEREAS**, the City desires to obtain the technology products and professional services that are specifically set forth in this Agreement; and

**WHEREAS**, the City procured these technology products and professional services in accordance with Administrative Regulation 3.10; and

**WHEREAS**, Offeror possesses the skills and expertise necessary to provide such technology products and professional services as desired by the City; and

**WHEREAS**, this Agreement is authorized by action of the City Council dated April 20, 2022;

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

**1. TERM OF AGREEMENT:**

The term of this Agreement shall commence on the effective date and the term shall extend for five (5) years, with one option to extend the term for five (5) additional years, which option may be exercised at the sole discretion of the City.

Notwithstanding the foregoing, 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 above; 2) completing the services set forth in the Scope of Work attached as **Exhibit C** (the “Services”); 3) payment of the maximum compensation under Paragraph 4 of this Agreement, unless it is amended to allow additional compensation; or 4) termination pursuant to the provisions of this Agreement.

**2. CONTRACT ADMINISTRATION AND OPERATION:**



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- 2.1 Health, Environmental and Safety Requirements.** The Contractor's products, services and facilities shall be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City. The City shall have the right to inspect operations conducted by the Offeror or subconsultant in the performance of this Agreement.
- 2.2 Compliance with Laws.** Offeror agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Agreement regardless of whether or not they are referred to by the City. Offeror agrees to permit City inspection of Offeror's business records, including personnel records, to verify any such compliance. Because the Offeror will be acting as an independent Offeror, the City assumes no responsibility for the Offeror's acts.
- 2.3 Strict Performance.** Either party's failure to insist on strict performance of any term or condition of the Contract will not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it; except where enforcement of this provision would be in conflict with the scope or proposal.
- 2.4 Commencement of Work.** The Offeror is cautioned not to commence any billable work or provide any material or service under this Agreement until Offeror receives a fully executed contract document or otherwise directed to do so, in writing by the City.
- 3. PERFORMANCE BOND OR IRREVOCABLE STANDBY LETTER OF CREDIT:** Prior to commencement of work to be performed, Consultant shall provide, (and shall maintain during the term of this Agreement), a performance bond or irrevocable standby letter of credit (a "Letter of Credit") to guarantee the full and faithful performance by Consultant of all the terms and conditions of this Agreement and stand as security for payment by Consultant of all claims by the City. Consultant's failure to provide a performance bond or Letter of Credit under this Section shall be a material breach of this Agreement.
- If the security is in the form of a performance bond, the performance bond shall be issued in a form that is satisfactory to the City and must be issued by a surety company authorized to write surety business in Arizona. The surety company providing the performance bond must have an A.M. Best Rating of B+ VI or better for the past four quarters.



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If the security is in the form of a Letter of Credit, the Letter of Credit shall be issued by a local financial institution in the Phoenix metropolitan area in a form that is satisfactory to the City, and the City must be able to draw upon the Letter of Credit at any of the financial institution's counters in the Phoenix metropolitan area. If a Letter of Credit is obtained, then unless City receives a written extension of that Letter of Credit in a form acceptable to the City at least 60 days before the end of the term of such letter of credit, the City, without notice to Consultant, may draw upon the full amount of that Letter of Credit and retain all proceeds as a cash security pursuant to this paragraph. The City will not pay interest to Consultant on any bond or Letter of Credit. See **Exhibit D** attached hereto for the City's required Letter of Credit form.

#### 4. SCOPE OF WORK AND SPECIAL TERMS AND CONDITIONS:

Offeror will provide Services in accordance with the Scope of Work (SOW) as set forth in **Exhibit C**, which may be supplemented from time to time during the term of the Agreement, and that are satisfactory to the City. In performing these Services, Offeror shall also specifically comply with the applicable Special Terms and Conditions that are set forth in **Exhibit E, if any**. Offeror will provide progress reports and weekly time sheets to the Project Manager according to a mutually agreed-upon schedule.

#### 5. INSURANCE AND INDEMNITY:

Offeror and subconsultants shall throughout the term of this Agreement comply with the insurance and indemnity requirements of **Exhibit A, and other indemnity provisions in this Agreement**. Offeror and subconsultants shall also 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 this Agreement. Failure of Offeror and subconsultants to maintain insurance during the term of the Agreement, including renewal options, is a material breach of this Agreement and may result in immediate termination of this Agreement without notice. Insurance requirements are subject to periodic review and adjustment by the City.

#### 6. INDEPENDENT OFFEROR STATUS; EMPLOYMENT DISCLAIMER:

The parties agree that Offeror is providing the Services under this Agreement on a part-time and/or temporary basis and that the relationship created by this Agreement is an independent Offeror relationship. Neither Offeror nor any of Offeror'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



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Offeror.

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 Offeror will be considered a City employee, and that no rights of City Civil Service, City retirement or City personnel rules shall accrue to such individuals. Offeror shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and shall save and hold harmless the City with respect thereto.

### 7. LEGAL WORKER REQUIREMENTS

City is prohibited by A.R.S. § 41-4401 from awarding a contract to any Offeror who fails, or whose subconsultants fail to comply with A.R.S. § 23-214(A). Therefore, Offeror agrees that:

- a. Offeror and each subconsultants it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A).
- b. A breach of a warranty under this section shall be deemed a material breach of the contract that is subject to penalties including termination of this Agreement.
- c. City retains the legal right to inspect the papers of any Offeror or subconsultants employee(s) who work(s) on this Agreement to ensure that Offeror or subconsultants complying with the warranty under this section.

### 8. CONFIDENTIALITY AND DATA SECURITY: All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Agreement is confidential, proprietary information owned by the City. Except as specifically provided in this Agreement, the Contractor shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager or his/her designee.

Personal identifying information, financial account information, protected health information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Contractor must encrypt all data at rest and in transit using approved



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levels as defined in NIST Cryptography Standards and guidelines. Special Publication 800-175B. All infrastructure must reside in the continental United States. Access control solutions must meet City Standards and support multi-factor authentication. This includes data saved to laptop computers, computerized devices, handheld devices, networking devices, removable storage devices, or other electronic media, as well as data in transit, such as during email or file transfer.

When personal identifying information, financial account information, protected health 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. Contractor must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

This includes implementing and monitoring compliance with policies and procedures that require the redaction, destruction, erasure, or other disposal of paper documents and electronic media containing personal identifying information, financial account information, protected health information, or restricted City information so that these types of information cannot practicably be read or reconstructed. Contractor will provide the City with its information security policies and procedures regarding the redaction, destruction, erasure, or other disposal of documents and information.

In the event that data collected or obtained by the Contractor in connection with this Agreement is suspected to have been compromised, Contractor shall notify the contracting City department immediately. Contractor agrees to reimburse the City for any costs incurred by the City to investigate and respond to potential breaches of this data, including, where applicable, the cost of notifying individuals who may be impacted by the breach, attorneys' fees, and for any monetary damages or penalties the City is assessed. In case of a breach or critical breach of the City's information, it will be the City, not the Contractor that will inform any and all individuals affected by any such breach. Only upon prior written consent of the City, or at the specific direction of the City, will the Contractor notify individuals affected by a breach or critical breach of the City's information.

Contractor agrees that the City may assess or test the security of any applications, web services, or computerized systems created or provided by the Contractor that process, store, or transmit City information. If the City finds vulnerabilities that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS) in these applications, web services, or computerized systems, the Contractor agrees to remediate the vulnerability at no cost to the City and within an agreed-upon timeframe not to exceed 90 days. To clarify, the Contractor must remediate found



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vulnerabilities in computerized systems they provide; Contractor is not liable for remediating any vulnerability found in the City's network or computing infrastructure used to support the applications, web services, or systems created or provided by the Contractor.

Contractor agrees to abide by all current applicable legal and industry data security and privacy requirements. These include, but are not limited to, Arizona Revised Statutes §44-7501 — Notification of breach of security system; Arizona Revised Statutes §44-7601 — Discarding and disposing of records containing personal identifying information; Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules; Health Information Technology for Economic and Clinical Health (HITECH) Act, and Payment Card Industry Data Security Standards.

Contractor agrees to demonstrate that they have adequate controls and safeguards when they host or process personal identifying information, financial account information, protected health information, or restricted City information. This may be accomplished through a third-party audit utilizing a widely recognized auditing standard, such as Statement on Standards for Attestation Engagements (SSAE18) No. 18, or through earning industry certification, such as ISO/IEC 27001. Additionally, Contractor/Consultant will follow industry recognized security frameworks as part of their security program covering infrastructure, operations, policy and procedure. This can include ISO/IEC 27001, Nist Cyber Security Framework or SP 800/53. Evidence must be provided to show compliance annually.

By signing and entering this Agreement the Contractor specifically acknowledges that it is responsible for the security of cardholder data that Contractor possesses or otherwise stores, processes or transmits on behalf of the City. Additionally, as a requirement of this contract you must provide to the City a copy of your written Notice to customers that you are responsible for the security of cardholder data that you obtain and otherwise store, process or transmit.

Contractor agrees to comply with all City information security and technology policies, standards, and procedures when accessing City networks and computerized systems whether onsite or remotely.

Contractor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Contractor. 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.



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The obligations of Contractor under this Section shall survive the termination of this Agreement.

### 9. CONTACTS WITH THIRD PARTIES:

Offeror or its subconsultants shall not contact third parties to provide any information relating to the Services provided under this Agreement without the prior written consent of the City. Should Offeror or its subconsultants 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, Offeror or its subconsultants 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 Offeror and its subconsultants under this Section shall survive the termination of this Agreement. Offeror agrees that the requirements of this Section shall be incorporated into all subconsultants agreements entered into by the Offeror. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

### 10. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENT

**10.1.** In order to do business with the City, Offeror must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Opportunity Requirements. Offeror will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

**10.2. *For an Offeror with 35 employees or less:*** Offeror in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Offeror will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, 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 Offeror further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Offeror further agrees that this clause will be incorporated in all



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subcontracts, job-Offeror agreements or subleases of this agreement entered into by supplier/lessee.

**10.3. For an Offeror with more than 35 employees:** Offeror in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Offeror will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. 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 Offeror 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. Offeror further agrees that this clause will be incorporated in all subcontracts, job-Offeror agreements or subleases of this Agreement entered into by supplier/lessee. The Offeror further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

**10.4.** Documentation. Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

**10.5.** Monitoring. The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

### **11. AUDIT/RECORDS:**

The City reserves the right to, at reasonable times, audit Offeror's books and records relative to the performance of service under this Agreement. All records pertaining to

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this agreement shall be kept on a generally accepted accounting basis for a period of three (3) years following termination of the Agreement.

**12. COMPLIANCE WITH LAWS:**

Offeror shall comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes and regulations which are, or become applicable to this Agreement and the Services. If a subsequently enacted law imposes substantial additional costs on Offeror, Offeror may request an amendment to this Agreement in order to address such additional costs; however, no such amendment or change order may be approved by the City if it results in an increase of the Agreement amount over that approved by the City Council unless the Council approves an increased Agreement amount.

**13. BACKGROUND SCREENING – STANDARD RISK:**

**Contractor and Subcontractor Workers Background Screening:**

- a. Contractor agrees that all Contractor and subcontractors’ workers (collectively “Contractor’s Worker(s)”) that Contractor furnishes to the City pursuant to this agreement will be subject to background and security checks and screening (collectively “Background Screening”) at Contractor’s sole cost and expense, unless otherwise addressed in the Scope of Work.
- b. The background screening provided by Contractor will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening required in this section is necessary to preserve and protect the public health, safety and welfare.
- c. The background screening requirements set forth in this section are the minimum requirements for the agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor’s services under this agreement or Contractor’s failure to comply with this section. Therefore, in addition to the specific measures set forth below, Contractor and its Contract Workers will take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this agreement
- d. Unless otherwise addressed in the scope of work, the contracting department will review and approve maximum risk background check results provided by the Contractor. Information to verify the results will be returned to the Contractor after the City’s review. The City will not keep records related to background checks. The City will only respond with an approve or deny.



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**13.1 Background Screening Level:** Because of the varied types of services performed, the City has established two levels of risk and associated background screening: Standard and Maximum risk. The current risk level and background screening required is **STANDARD RISK LEVEL**. A standard risk background screening will be performed when the Contract Worker's work assignment will:

- require a badge or key for access to City facilities; or
  - allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
  - allow unescorted access to City facilities during normal and non-business hours.
- a. **Requirements:** The background screening for this standard risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Offeror worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire.

b. **Offeror Certification; City Approval of Background Screening:**

Unless otherwise provided for in the Scope, Offeror will be responsible for:

- i. determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and,
- ii. for reviewing the results of the background check every five years; and,
- iii. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- iv. Submitting the list of qualified Contract Workers to the contracting department.
- v. For sole proprietors, the Offeror must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- vi. By executing this agreement, Offeror certifies and warrants that Offeror has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current. Also, by executing this agreement, Offeror further certifies and warrants that Offeror has satisfied all background screening requirements for the standard risk background screening, and verified legal worker status, as required.

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#### **14. AGREEMENT AMENDMENTS**

Whenever an addition, deletion or alteration to the Services described in **Exhibit C** 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 Offeror before such addition, deletion or alteration shall be performed. Changes to the Services may be made and the compensation to be paid to Offeror may be adjusted by mutual agreement, but in no event may the compensation exceed the amount authorized by the Phoenix City Council for this Agreement without further authorization by the City Council. It is specifically understood and agreed that no claim for extra work done or materials furnished by Offeror will be allowed except as provided herein, nor shall Offeror do any work or furnish any materials not covered by this Agreement unless first authorized in writing by the City. Any work or materials furnished by Offeror without prior written authorization shall be at Offeror's risk, cost and expense, and Offeror agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

#### **15. NON-ASSIGNABILITY:**

**15.1** This Agreement is in the nature of a personal services contract and Offeror shall have no power to assign this Agreement, including any right, duty, or obligation of Offeror under this Agreement, without the prior written consent of the City. Offeror shall not subcontract with any third party for any component of the Services without the prior written consent of the City. Any attempt to assign or subcontract without the City's prior written consent shall be void.

**15.2** An essential consideration provided to the City by Offeror to induce the City to enter into the Agreement is Offeror's representation that the individual(s) performing services shall include Offeror's principals as selected through the RFP solicitation process. Therefore, should such named individual(s) sever their relationship with Offeror, or otherwise be unavailable to carry out Offeror's duties under this Agreement for a period of time deemed to be excessive by the City in its sole and absolute discretion, then the City may, without notice, immediately terminate this Agreement for cause.

#### **16. NOTICES:**

Any notice, consent or other communication ("Notice") required or permitted under this Agreement shall be in writing and either: 1) delivered in person; 2) sent via e-mail, read receipt requested; 3) sent via facsimile transmission; 4) deposited with

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any commercial air courier or express service; or 5) deposited in the United States mail, postage prepaid.

If to Offeror:

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CONTACT NAME  
COMPANY NAME  
ADDRESS  
CITY STATE ZIP  
TELEPHONE  
EMAIL ADDRESS

If to the City:

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Chris Ewell, Deputy Director City of Phoenix, Street Transportation Department 200 W. Washington St., 6 <sup>th</sup> Floor Phoenix, AZ 85003 Telephone: (602) 534-0592 E-Mail: <a href="mailto:chris.ewell@phoenix.gov">chris.ewell@phoenix.gov</a>	Deryck Lavelle, Assistant City Attorney City of Phoenix, Office of the City Attorney 200 West Washington, 13th Floor Phoenix, AZ 85003-1611 Telephone: (602) 534-1480 E-mail: <a href="mailto:deryck.lavelle@phoenix.gov">deryck.lavelle@phoenix.gov</a>
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Notice shall be deemed received: 1) at the time it is personally served; 2) on the day it is sent via e-mail; 3) on the day it is sent by facsimile transmission; 4) on the second day after its deposit with any commercial air courier or express 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. Either party may change its mailing address, telephone number, facsimile number, e-mail address, or the person to receive Notice by notifying the other party as provided in this Section. Notices sent by e-mail and facsimile transmission must 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.

**17. 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, statement of intention, or variation of the terms of this Agreement has been made which is not embodied in this Agreement or a written amendment hereto signed by

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Offeror and the City, and no party hereto shall be bound by or liable for any agreement or representation not so set forth.

**18. 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 the interpretation and enforcement of this Agreement and any claims or disputes relating to or arising out of this Agreement and/or the Services. Jurisdiction and venue for any action arising out of or relating to this Agreement or the Services shall lie exclusively in the state or federal courts within Maricopa County, Arizona, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

**19. FISCAL YEAR CLAUSE:**

The City's fiscal year begins July 1 and ends June 30 each calendar year. The City may make payment for services rendered or costs encumbered only during a fiscal year and for a period of 60 days immediately following the close of the fiscal year, under the provisions of Arizona Revised Statutes §42-17108. Therefore, Offeror 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.

**20. 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 Offeror in writing. Immediately upon receiving a written notice to terminate or suspend Services, Offeror shall:
  - i. Discontinue advancing the work in progress, or such part that is described in the notice.
  - ii. 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.
  - iii. Appraise the work it has completed and submit its appraisal to the City for evaluation.
  - iv. In the event of a termination pursuant to this section the Offeror shall be paid in full the pro rata value for services performed to the date of its receipt



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of the Notice of Termination, including reimbursement for all reasonable costs and expenses incurred by Offeror in terminating the work, including demobilization of field service. No payment shall be made for loss of anticipated profits or unperformed services. The City shall have no liability for lost profits or other damages suffered by Offeror as a result of a termination pursuant to this section.

- b. Final Payment.** The City shall make final payment for all Services performed and accepted within sixty (60) days after Offeror has delivered to the City any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Agreement.
- c. Temporary Suspension.** The City may, by written notice, direct Offeror 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 Offeror in performance, and such additional expense is not due to fault or negligence of Offeror, 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 Offeror for a price adjustment must be supported by appropriate documentation asserted promptly after Offeror has been notified to suspend performance.

### 21. PROFESSIONAL COMPETENCY:

- a. Qualifications.** Offeror 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. Offeror further represents that it is fully experienced and properly qualified with respect to the Services; is in compliance with all applicable law and license requirements; and is adequately equipped, organized, and financed to perform the Services.
- b. Level of Care and Skill.** Services provided by Offeror will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of Offeror's profession currently practicing in the same industry under similar conditions. Acceptance or approval by the City of Offeror's work shall in no way relieve Offeror of liability to the City for damages arising from the failure of Offeror to adhere to the aforesaid standard of professional competence.
- c. Conflict of Interest.** Except for the Scope of Work described herein, Offeror shall be prohibited from submitting any bid or proposal on any of the contracting opportunities arising from the Scope of Work. In addition, Offeror shall not have



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any pecuniary or proprietary interest in any agreement for which Offeror is performing services for the City under this Agreement. Offeror shall refrain from engaging in or carrying on any activity on behalf of any client which is in any way directly averse to the City or its interests without the specific written consent and waiver of the City. Such waiver normally requires the concurrence of City management and the Phoenix City Council. A waiver of conflict of interest may be considered by the City when different personnel within the Offeror's firm are undertaking the concurrent representations and the firm takes sufficient steps to ensure confidentiality.

### **22. SPECIFIC PERFORMANCE:**

Offeror agrees that, in the event of a breach by Offeror 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 Offeror as a discharge of the Agreement, the City may nevertheless maintain an action to recover damages arising out of such breach. This paragraph is not intended as a limitation of such other remedies as may be available to the City under law or equity.

### **23. FORCE MAJEURE:**

Offeror shall not be responsible or liable for, or deemed in breach hereof because of, any delay in the performance of its obligations hereunder to the extent caused by circumstances beyond its control, without its fault or negligence, and that could not have been prevented by the exercise of due diligence, including but not limited to fires, natural disasters, riots, wars, unavoidable and unforeseeable site conditions, failure of the City to provide data within the City's possession or to make necessary decisions or provide necessary comments in connection with any required reports prepared by Offeror in connection with the Services, and the unforeseeable inability to obtain necessary site access, authorization, permits, licenses, certifications and approvals (such causes hereafter referred to as "Force Majeure").

### **24. INTELLECTUAL PROPERTY AND SPECIAL TERMS AND CONDITIONS:**

**a. Definitions.** "Deliverables" means any and all software, equipment, systems, work to be delivered, services to be performed, or other work products provided by the Offeror within the scope of this Agreement.

"Intellectual Property" means all intellectual property rights, including with limitation, any rights in any invention, patent, discovery, improvement, know-how, utility model, trade-mark, copyright, industrial design or mask work, integrated



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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.

“Licensed Patents” shall mean all patents throughout the world (including patents of importation, improvement patents, patents and certificates of addition and utility models, as well as divisions, reissues, continuations, renewals, and extensions of the foregoing), applications therefore, and patents which may issue upon such applications, as to which patents or applications Offeror has at any time during the Term of this Agreement the right to grant licenses of.

“Licensed Products” shall mean any and all Deliverables which employ or are produced by the practice of inventions claimed in the Licensed Patents.

- b. Intellectual Property Rights.** Offeror grants to City a nonexclusive, non-transferable (except to a wholly-owned subsidiary of the City), and royalty-free right and license to install, use, and maintain the software, application(s), or similar technology to be provided to the City pursuant to this agreement (collectively, the “Deliverables”) for the City’s internal or business purposes. The City shall further have the right to reproduce the Deliverables to the extent reasonably necessary for such purposes. The City shall not, without the Offeror’s prior written consent, transfer or sub-license its foregoing license rights (except to a wholly-owned subsidiary of the City) or reverse engineer, decompile, or otherwise attempt to derive source code from the Deliverables.
- c. Intellectual Property Indemnification.** In addition to the indemnification provided for elsewhere in this Agreement, Offeror 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, or other intellectual property rights of third parties, provided that Offeror is notified in writing of such claim. The City will reasonably cooperate with Offeror, at Offeror’s expense, to facilitate the settlement or defense of such claim. Without limiting in any way the Offeror obligations set forth herein, if, as a result of any claim of infringement by Offeror, the City is enjoined from using the Deliverables provided under this Agreement, or if Offeror reasonably believes that the Deliverables are likely to become the subject of a claim of infringement, Offeror may, at Offeror’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 functional and capability for the purpose for which the Deliverable was provided.



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- d. Limitation of Liability.** CITY WILL NOT BE LIABLE TO OFFEROR 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 OFFEROR 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.
- e. Document Delivery.** 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 Offeror.
- i. All documents prepared by Offeror shall be prepared in a format and at a quality approved by the City.
  - ii. Offeror 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.
  - iii. Offeror shall provide timely and periodic submittals of all documents required of Offeror, including sub-agreements, if any, as such become available to the City for review.
- 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 or a related subcontract.
- g. Warranty Against Infringement.** Offeror warrants that the Deliverables will be free of the rightful claim of any third party for or by way of infringement or misappropriation of patent, copyright, trade secret, trademark or other rights arising under the laws of the United States. Offeror further warrants that no act or omission of Offeror will result in a third party holding a claim that interferes with the City's enjoyment or use of the Deliverables.

Offeror warrants that it owns or possesses all rights, title and licenses necessary to perform its obligations hereunder.

Offeror warrants that, as of the Effective Date and throughout the Term, Offeror has not conveyed any rights or licenses to any third party regarding the



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Deliverables.

- h. Warranty on Deliverables.** Offeror warrants the Deliverables (including hardware, electrical, electronic, mechanical, and all other system components, including installation, but excluding software), for a period of one (1) year starting with the date of final system acceptance (the “Warranty Period”), to be substantially free of any condition which would make the system fail to perform other than in material accordance with the requirements set forth in this Agreement (each such condition to be considered an “Error”). Offeror specifically warrants that all software (also a Deliverable) shall be free of any condition which could make it fail to perform other than in material accordance with the specifications (each such condition to be considered an “Error”) for a period of 9 months after actual installation of the software. If the City reports to Offeror any Errors in the system during the Warranty Period, then Offeror shall, at its expense, use reasonable commercial efforts to modify or replace the faulty hardware, software, electrical component or other system feature as quickly as reasonably practicable. Where possible, both parties shall attempt to resolve Errors through telephone instruction, issuance of updated documentation, corrective code, or hardware replacement or modification.
- i. Maintenance.** During and after the expiration of the Warranty Period, if a written maintenance and support agreement has not yet been finalized by the parties, the City has the right to receive Basic Maintenance as hereinafter described in addition to the warranty service described above. For purposes of this Agreement, “Basic Maintenance” shall consist of:
- i. The right of the City to contact Offeror by telephone or email and to consult with Offeror regarding installation, functions, operation, Errors, and updates of the Deliverable free of charge;
  - ii. -Telephone support: Contact name, contact number, hours of support;
  - iii. Email support: Email address, turn-around response time on emails;
  - iv. On-line bulletin services: website address;
  - v. Tips for more efficient use of software: where to look;
  - vi. Patches and bug fixes: how will patches and bug fixes be handled?
  - vii. Errors: how will Errors be corrected, using commercially reasonable efforts? Downtime?
  - viii. Product updates: how and when will this happen?
  - ix. Installation: how will it be handled?
  - x. Escalation of issues: how will issues be escalated and resolved?
  - xi. Training: what is offered? Included? How many employees? Follow-up?



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- xii. Compensation: how will issues be compensated for if delay by Offeror in resolving them? Additional services for free? Extension of support/maintenance duration? Availability of Offeror's personnel for error correction.

- j. **Acceptance of Deliverables.** Final acceptance of Deliverables shall be provided only after successful completion of testing of the Deliverables. Final acceptance shall not occur until all phases of implementation have been successfully performed. If applicable, acceptance test criteria are set forth below and/or detailed in **Exhibit C**.

Upon completion of any Deliverable, Offeror shall provide a copy thereof to the City for acceptance and approval. At such time, at City request, Offeror will demonstrate to the City that the Deliverable conforms to the description specified for such Deliverable. City will be responsible for any additional review and testing of such deliverable in accordance with any mutually agreed test scripts as may be included in Offeror's project management plan. If the Deliverable does not conform to the description for such Deliverable specified City shall have five business days after Offeror's submission of the Deliverable (the "Acceptance Period") to give Offeror written notice which shall specify the deficiencies in detail. Offeror shall use best efforts to promptly cure any such deficiencies. After completing such cure, Offeror shall resubmit the Deliverable for City review and testing as set forth above. Upon accepting any Deliverable submitted by Offeror, City shall provide Offeror with written acceptance of such Deliverable. If the City fails to provide written notice of any deficiencies within the Acceptance Period, as provided above, such Deliverable shall be deemed accepted at the end of the Acceptance Period.

- k. **Non-Disclosure.** In addition to the confidentiality and data security requirements of this Agreement, Offeror shall not disclose, without the City's prior written consent, any information obtained from the City in connection with this Agreement to any person, firm, corporation, association, or other entity other than City employees qualified to receive such information, for any reason or purpose whatsoever, nor shall Offeror 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.

Offeror agrees to act as a trustee of the foregoing information and as trustee of any other confidential information learned in connection by Offeror's relationship with the City. Offeror further represents to the City that, as an inducement to enter this Agreement, Offeror will hold this information in trust and confidence for the City's sole benefit and use.



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Further, the Offeror shall not disseminate or publish of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the City.

Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Agreement, then, and in that event, upon written demand, Offeror 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 Offeror pending the resolution of the existing or anticipated litigation.

Offeror agrees that the requirements of this Section shall be incorporated into any subcontracts entered into by Offeror in connection with the Services. 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 Offeror under this Section shall survive the termination of this Agreement.

- i. Supervision of Others.** Offeror shall take all reasonable precautions to prevent any other person with whom Offeror is or may become associated (whether as supervisor, employee, owner or otherwise) from acquiring Confidential Information from or through Offeror and/or using or divulging such Confidential Information at any time; provided, however, Offeror shall not be responsible or liable, nor shall it be in breach of this Subsection, 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 City.
- m. Copyright License.** In consideration of all obligations of City hereunder, including without limitation the payment by City of amounts owing under this Agreement, Offeror hereby grants to City an exclusive (both as to Offeror and to third parties), fully transferable, worldwide, perpetual license (including the right to grant sublicenses) to use, copy, distribute, prepare derivative works of, execute, and publicly display the Deliverables.
- n. Trademark License.** Offeror hereby grants to City an exclusive, fully transferable license (including the right to grant sublicenses) to use its trademarks on copies of the Deliverables and in on advertising and printed materials therefore.
- o. Software License.** Offeror grants to City an irrevocable, perpetual, nonexclusive, non-transferable (other than to Affiliate), fully paid – up right and license to use,

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display, copy and maintain the Software limited to City's internal business purposes, which may include the right to make backup copies and to use the software at unlimited workplaces. All software and patent rights shall remain in Offeror's property. This license shall be limited to the scope of the Agreement.

**25. RELEASE OF INFORMATION - ADVERTISING AND PROMOTION:**

Offeror 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 Offeror without the prior written consent of the City.

**26. CONFLICTS OF INTEREST:**

Offeror acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Phoenix City Council or any employee of the City has any financial interest in the consulting firm. For breach of violation of this warranty, the City shall have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.

The City reserves the right to disqualify Offeror and/or terminate this Agreement in the event that the City determines that Offeror has an actual or apparent conflict of interest with the purposes of this Agreement and the provisions and procedures set forth in the section of this Agreement titled "TERMINATION OR SUSPENSION OF SERVICES" shall apply.

Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Offeror, or any agent or representative of Offeror, 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 Offeror, terminate this Agreement. In the event of such termination, the City shall be entitled to the same remedies against Offeror as could be pursued in the event of default by Offeror.

This Agreement is subject to the requirements of Arizona Revised Statutes §38-511.

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**27. CLAIMS OR DEMANDS AGAINST THE CITY:**

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

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

**28. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS:**

Offeror 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.

**29. CONTINUATION DURING DISPUTES:**

Offeror 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 its 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.

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.

**30. HIRING OF EACH OTHER'S PERSONNEL:**

Without the prior written consent of the other party, each party shall not actively target for hire personnel of the other party through the term of this Agreement and for six months after the expiration or termination of the last Statement of Work executed by the parties. This prohibition does not apply to or affect in any way the City's standard recruitment processes. The City will not owe any compensation



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whatsoever to the Offeror if Offeror's employee files an employment application, competes successfully and is hired into a City position. Individuals who are employed by Offeror and who are on assignment at the City may file an application for regular City employment and be considered on the same merits and qualifications as would all other applicants. For this reason, compensation to Offeror would not be appropriate and not incurred if such worker succeeds in the selection process and is appointed to a regular City position.

### 31. **LAWFUL PRESENCE REQUIREMENT:**

Pursuant to A.R.S. §§ 1-501 and 1-502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement **does not** apply to business organizations such as corporations, partnerships or limited liability companies.

### 32. **THIRD PARTY BENEFICIARY CLAUSE:**

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

### 33. **AGREEMENT INTERPRETATION:**

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

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

**33.3 Non-Waiver of Liability.** The City, as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, Offeror agrees

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that it will not insist upon, demand, or be entitled to any statement whereby the City agrees to limit in advance or waive any right the City might have to recover lawful damages.

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

**34. NON-EXCLUSIVITY; AGREEMENT CHANGES:**

**34.1 Non-Exclusive Contract.** Any Agreement resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Phoenix. The City reserves the right to obtain like goods or services from another source when necessary.

**34.2 Authorized Changes.** The City reserves the right at any time to make changes in any one or more of the following, as long as there is not a conflict with the Scope or Proposal: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be deemed waived unless asserted in writing within 30 days from the receipt of the change. Price increases or extensions of delivery time shall not be binding on the City unless evidenced in writing and approved by the Department Director prior to the institution of the change.

**35. WARRANTIES:**

**35.1 Quality.** Offeror expressly warrants that all goods or services furnished under this Agreement shall conform to the specifications and appropriate standards.

**35.2 Responsibility for Correction.** It is agreed that the Offeror shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance.



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**35.3 Liens.** Offeror shall indemnify, defend, and hold the City harmless from liens or other claims by claimants supplying labor or materials to the Offeror or its subconsultants in the performance of the work required under this Agreement. Offeror agrees to secure, at its own expense, the release of any liens relative to the Deliverables.

**35.4 Professional Responsibility.** Offeror shall use those efforts which a skilled, competent, experienced, and prudent person or organization would use to perform and complete the requirements of this Agreement in a timely manner conforming to the standards and quality generally recognized and accepted within the profession throughout the United States.

**35.5 Indemnification – Patent, Copyright and Trademark.**

In addition to any other indemnification required by this Agreement, Offeror 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 Technology Assets infringe the patents, copyrights, or other intellectual property rights of third parties, provided that Offeror is notified in writing of such claim. The City will reasonably cooperate with Offeror, at Offeror's expense, to facilitate the settlement or defense of such claim. Without limiting in any way the Offeror obligations set forth herein, if, as a result of any claim of infringement with respect to the Technology Assets, the City is enjoined from using the Technology Assets, or if Offeror reasonably believes that the Technology Assets are likely to become the subject of a claim of infringement, Offeror may, at Offeror's option and expense, (1) procure the right for the City to continue to use the Technology Assets, or (2) replace or modify the Technology Assets so as to make them non-infringing and of equal or superior functionality and capability for the purpose(s) for which the Technology Assets were provided.

The Offeror's obligation to indemnify, defend, and hold harmless the City pursuant to this subsection shall be reduced to the extent the applicable infringement is caused or alleged to be caused by the alteration or modification of the Technology Assets by the City (including its employees and Offerors other than the Offeror and its subconsultants) other than in connection with the ordinary or expected use of the Technology Assets.

**35.6 Warranties.** Offeror warrants the hardware, software, application(s), or other technology assets provided to the City pursuant to this contract (collectively, the "Technology Assets"), for a period of one year starting with the date of final acceptance (the "Warranty Period"), to be substantially free of any



## ATTACHMENT A - AGREEMENT

CITY OF PHOENIX

condition which would make the Technology Assets fail to perform in material accordance with the requirements set forth in this Agreement, including any statement-of-work or scope-of-work document (each such condition to be considered an “Error”). Offeror specifically warrants that all software Technology Assets shall be free of any condition which could make them fail to perform in material accordance with this agreement (each such condition to also be considered an “Error”) for a period of nine months after actual installation of the software. If the City reports to Offeror any errors in the system during the Warranty Period, then Offeror shall, at its expense, use reasonable commercial efforts to modify, replace, or otherwise remedy the faulty hardware, software, electrical component or other Technology Assets as quickly as reasonably practicable. Where possible, both parties shall attempt to resolve Errors through telephone instruction, issuance of updated documentation, corrective code, or hardware replacement or modification

**35.7 STANDARDS AND PRACTICES.** Technology Assets shall conform to the generally accepted standards and practices of the trade or industry involved. All work shall be executed by personnel skilled in their respective lines of work.

**35.8 QUALIFICATIONS.** Offeror represents that it is fully experienced and properly qualified; is in compliance with all applicable license requirements; and, is equipped, organized, and financed to provide and/or perform the goods and/or services purchased by the City pursuant to this agreement.

**35.9 INTELLECTUAL PROPERTY WARRANTIES.** Offeror warrants that:

- a. The Technology Assets will be free of the rightful claim of any third party for or by way of infringement or misappropriation of patent, copyright, trade secret, trademark or other rights arising under the laws of the United States;
- b. No act or omission of Offeror will result in a third party holding any other claim that interferes with the City’s enjoyment or use of the Technology Assets;
- c. Offeror owns or possesses all right(s), title(s) and license(s) necessary to perform its obligations hereunder; and
- d. As of the effective date and throughout the term of this Agreement, Offeror has not conveyed and will not convey any rights or licenses to any third party regarding the Technology Assets, except to the extent the Technology Assets consist of commercial-off-the-shelf or similar software product(s).

## 36. CITY’S CONTRACTUAL RIGHTS:



## ATTACHMENT A - AGREEMENT

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

**36.2 Non-Exclusive Remedies.** The rights and remedies of the City under this Agreement are non-exclusive.

**36.3 Default.** In case of default by the proposer, the City may, by written notice, terminate this Agreement and repurchase from another source and may recover the excess or additional costs caused thereby by (1) deduction from an unpaid balance due; (2) collection against the proposal and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

**37. DAMAGE TO CITY PROPERTY:** Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City.

Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

	<b>ATTACHMENT A - AGREEMENT</b>	<b>CITY OF PHOENIX</b>
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**IN WITNESS WHEREOF**, the parties herein have caused this Agreement to be executed.

**OFFEROR –**

**CITY OF PHOENIX,**  
 An Arizona municipal corporation  
  
 JEFFEREY BARTON, City Manager

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM,  
 CRIS MEYER, City Attorney

\_\_\_\_\_  
 Deryck LaVelle  
 Assistant Chief Counsel

ATTEST:

\_\_\_\_\_  
 Denise Archibald, City Clerk

\_\_\_\_\_  
 Date



## EXHIBIT A – INSURANCE & INDEMNIFICATION

CITY OF PHOENIX

### EXHIBIT A – INSURANCE & INDEMNIFICATION

#### **1. DEFENSE AND INDEMNIFICATION CLAUSE:**

Offeror (“Indemnitor”) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subconsultants (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state’s Workers’ Compensation Law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor’s Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

#### **2. OFFEROR’S INSURANCE:**

Offeror and subconsultants must procure insurance against claims that may arise from or relate to performance of the work hereunder by Offeror and its agents, representatives, employees and subconsultants. Offeror and subconsultants must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Offeror from liabilities that might arise out of the performance of the work under this Contract by the Offeror, its agents, representatives, employees or subconsultants and Offeror may purchase additional insurance as they determine necessary.

**2.1 SCOPE AND LIMITS OF INSURANCE:** Offeror must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella



## EXHIBIT A – INSURANCE & INDEMNIFICATION

CITY OF PHOENIX

liability policy may be used to meet the liability limits provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

### 2.1.1 Commercial General Liability – Occurrence Form

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

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Offeror related to this Contract.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Offeror.
- The Offeror’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

### 2.1.2 Automobile Liability

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

Combined Single Limit (CSL)	\$1,000,000
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- The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Offeror, relating to this Contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Offeror.



**EXHIBIT A – INSURANCE & INDEMNIFICATION**

**CITY OF PHOENIX**

- The Offeror’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

**2.1.3 Worker’s Compensation and Employers’ Liability**

Workers’ Compensation	Statutory
Employers’ Liability:	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

**2.1.4. Technology Errors and Omissions Liability**

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

- The policy must cover errors and omissions or negligent acts in the delivery of products, services, and/or licensed programs for those services as defined in the Scope of Services of this Contract.
- Offeror warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

**2.1.5. Network Security and Privacy Liability (required if Offeror has access to personal or confidential data.)**

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

- Policy must cover but not be limited to (1) coverage for third party claims and losses with respect to network risk and invasion of privacy (2) crisis management and third-party identity theft response costs and (3) cyber extortion.
- Offeror warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.



## EXHIBIT A – INSURANCE & INDEMNIFICATION

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**2.2 NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Contract, the Offeror must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to **Dana Garr, Contracts Specialist, 200 W. Washington St., 5<sup>th</sup> Floor, [dana.garr@phoenix.gov](mailto:dana.garr@phoenix.gov).**

**2.3 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 required minimum insurer rating is sufficient to protect the Offeror from potential insurer insolvency.

**2.4 VERIFICATION OF COVERAGE:** Offeror must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. 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 Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to Dana Garr, **Contracts Specialist, 200 W. Washington St., 5<sup>th</sup> Floor, [dana.garr@phoenix.gov](mailto:dana.garr@phoenix.gov)**. The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

**2.5 SUBCONTRACTORS:** Offeror’s certificates shall include all subcontractors as additional insureds under its policies **OR** Offeror shall be responsible for ensuring and verifying that all subconsultants have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Offeror that its subconsultants have insurance coverage. All subconsultants providing services included under this Contract’s Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Offeror may, on behalf of its subconsultants, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Offeror assumes liability for all subcontractors with respect to this Contract.

**2.6 APPROVAL:** Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment



**EXHIBIT B – CONSULTANT’S INSURANCE  
CERTIFICATE**

**CITY OF PHOENIX**

**EXHIBIT B – CONSULTANTS INSURANCE CERTIFICATE**



## EXHIBIT C – SCOPE OF WORK

CITY OF PHOENIX

### EXHIBIT C – SCOPE OF WORK

#### SCOPE OF WORK

##### SUMMARY

The City of Phoenix (City) Street Transportation Department (Streets) is seeking a qualified vendor (Vendor) to install, operate and maintain Interactive Digital “Smart” Kiosks (kiosks) throughout the downtown area at no cost to the City. Kiosks will be located in the City’s public right-of way (ROW), primarily on sidewalks or other public areas [approved by the City] and shall provide information of interest to visitors, residents, and downtown customers. Kiosks must not provide public WiFi access, publicly-accessible electrical outlets, charging stations or cameras (other than for pedestrian detection purposes). The City intends for all kiosks provided to be installed and operational no later than February 1, 2023.

**BACKGROUND:** Streets is responsible for roughly 5,000 miles of arterial, collector, and local streets in addition to managing the ROW. Streets seeks to enhance the pedestrian experience in the downtown Phoenix area by introducing kiosks into the ROW by partnering with a Vendor to install, operate and maintain kiosks that provide information on events, activities, and public services to kiosk users.

##### OFFEROR RESPONSIBILITIES

1. Provide kiosks at Offeror’s own expense and at no cost to City or kiosk users.
2. Deliver and inventory all kiosks.
3. Install, program and make all kiosks operational (i.e., hours of operation, software, etc.).
4. Follow all City Code requirements during installation and maintenance activities related to kiosks.
5. Provide a mobile-friendly web page and application that mirrors the content of the digital kiosks and can be accessed through scanning a QR Code or similar touchless technology with a mobile device.
6. Prepare and implement public education and marketing campaign (approved by the City) a minimum of ninety (90) days prior to kiosks becoming operational.
7. Provide informational signage or stickers for each new kiosk. Sticker formatting, all logos, and marketing materials require approval by the City of Phoenix.
8. Configure data management system and provide access credentials to City staff.
9. Establish 4G/5G cellular wireless data connectivity to each Kiosk.
10. Provide its own electricity (i.e. power), internet, routers, bandwidth, cabling, and content and data management system.
11. Manage kiosk advertising program including content, contracts, digital files, display time percentages/length of time, time of day, approval process, etc. City reserves the right to deny any content that does not meet the City’s advertising guidelines. Offeror must have City approval before agreeing to display any new advertisements.
12. Provide the design, fabrication, delivery, installation, implementation, operation,



## EXHIBIT C – SCOPE OF WORK

CITY OF PHOENIX

- maintenance, repair, and replacement of all kiosks provided to the City.
13. Provide the City with a plan to keep equipment and technology upgraded, refreshed, secure, and fully functioning during the term of the agreement.
  14. Provide 24/7 telephone line to call when kiosks are inoperable.
    - a. Phone number must be shown on all kiosks,
    - b. Provide a response time to begin repair work upon notice from the City and the estimated time to repair, remove and/or replace damaged kiosks.
  15. Provide itemized reports to the City and tailor reports as requested by the City. Report types include but are not limited to the following:
    - a. Financial (e.g., daily, weekly, monthly, and annual total revenue reports),
    - b. Technical (e.g., kiosk status logs),
    - c. Exception (e.g., communication malfunctions, out of order, etc.),
    - d. Administrative (e.g., kiosk programming and maintenance notifications, maintenance activities, etc.).
  16. Tailor reports as requested by the City.
  17. Provide kiosks that shall have the ability to display the following types of information (as well as other information of public interest that the Offeror proposes):
    - Wayfinding – Information about and directions to civic and cultural institutions, restaurants, retail, and other points of interest within the Downtown Phoenix area.
    - Transit Information – Information on transit routes including bus and light rail services, including trip planning and schedule options as well as local rideshare information. Data feeds with this information will be coordinated with the City of Phoenix Public Transit Department and Valley Metro.
    - Public Safety Announcements – Emergency messaging information including Amber and extreme weather alerts.
    - Increased Vibrancy and Visual Interest – Promote placemaking in Phoenix.
    - A Supportive Environment – For retail and entertainment commerce.
    - Enhance Visitor Experiences in downtown Phoenix.
    - Accessible Technology – For the community at large.
    - Cultural and Sporting Events – Information regarding local events and activities located within and near the Downtown Phoenix Area or area surrounding the specific kiosk location (including performing arts, seasonal festivals, baseball or basketball games, music concerts, marathons, conventions, etc).
    - Hyper-Local Information – Localized information regarding events, businesses, and restaurants within the Downtown Phoenix area and specifically related to the location of the kiosk being used.
    - City/County/State/Federal Services and Information – Links and access to information regarding general government services offered in the Downtown Phoenix area including mapping and directions to locations of these services.
    - ADA Compliance – Digital kiosks shall be **fully compliant** with all state and federal requirements related to the Americans with Disabilities Act and shall offer the latest technology and accommodations for persons with disabilities at the time of installation and the ability to upgrade as new technologies for ADA accommodation



## EXHIBIT C – SCOPE OF WORK

CITY OF PHOENIX

are developed.

- Multi-Language Support – Ability to offer English and Spanish at a minimum and additional language options are encouraged.
- Reporting Capabilities – Ability to capture usage statistics, pedestrian counts, and other information related to the use of the kiosks.
- Surveying/Polling – Ability to obtain public feedback from users of the kiosks to include public polling, questions related to City services and other interactivity.
- Advertising Content – Ability to show advertisements. Preference will be given to local businesses. City staff must review and approve all advertising content to be displayed on the kiosks. Advertising content guidelines will be consistent with those already in place for City bus shelters managed by the City of Phoenix Public Transit Department. (provided in Exhibit G)

18. Ensure FCC compliance and provide certifications to the City.

### **CITY RESPONSIBILITIES:**

- Be onsite during kiosk installation,
- Monitor installation to ensure compliance with all applicable laws or City ordinances,
- Provide Right-of-Way access,
- Provide escorted access to City facilities as applicable,
- Approve the final list of kiosk locations and quantities,
- Request reports and monitor usage,
- Provide Offeror website links to calendars and other information for display on kiosks,
- Approve content including advertising and applications on kiosks.

**LOCATION:** Installation of kiosks shall be in downtown Phoenix, which is generally bounded by 7<sup>th</sup> Avenue (west) and 7<sup>th</sup> Street (east) and McDowell Road (north) and Lincoln Street (south). For the initial launch of the program the City anticipates installation of kiosks in 20 locations in the ROW in high pedestrian traffic areas near the Phoenix Convention Center, major downtown attractions, office buildings, and residential buildings. (see EXHIBIT H)

**METHOD OF APPROACH:** Proposals must include Offeror’s approach (including timelines) to implementation of the kiosks from an executed agreement to installation and operation of kiosks, and ongoing maintenance and operations. The City is interested in the following information:

- Implementation schedule – timeline of milestones from contract execution through permitting, delivery, installation, integration of data & communication system, kiosk launch and ongoing maintenance.
- Installation steps – responsible parties and specific installation plans for proposed kiosks and equipment including permitting, kiosk assembly and mounting and programming software.



## EXHIBIT C – SCOPE OF WORK

CITY OF PHOENIX

- Operations and maintenance – ongoing maintenance, life expectancy, in-person inspection frequency, cleaning/sanitizing schedule, upgrading/refreshing schedule, etc.
- Training plan – plans for providing training for operation, programming, and management of back-end software.
- Marketing and education – plan for initial marketing, education, rollout and launch of kiosks.

The City intends for all kiosks to be fully operational by February 1, 2023 in time for Super Bowl LVII. Offeror must propose a business plan including specific milestones (and expected dates) in each timeline listed below:

Timeline 1 – Overall plan for the selection, design, manufacturing, fabrication, delivery, installation, implementation, operation, and launch of the initial 20 kiosks y.

Timeline 2 – Installation schedule of delivered kiosk including: obtaining power/data supply, utility research, plan review, submittal to utility partners at each location of each kiosk, permitting process, construction, and kiosk deployment schedule (which kiosk will be installed first, second, third, etc).

Timeline 3 – Maintenance plan, how often kiosks will be inspected/serviced, in-person assessment frequency, inspection checklist, types of reports provided to City, etc.

Timeline 4 – Advertising and Marketing plan including pro Forma, target markets, strategies to increase any revenue components, public outreach, and concept for launch day, and plan to solicit, create, review, and approve kiosk advertising content.

### **KIOSK SPECIFICATIONS:**

Physical design features must have:

- Modern design that is complimentary to the Downtown Phoenix area,
- Incorporation of shade structures in kiosk design to improve user interface and comfort,
- Vandal-resistant construction,
- Weather-resistant design with special emphasis on extreme heat conditions present in Metro-Phoenix (i.e, kiosk won't overheat, won't display "temperature needs to cool down" or "too hot to function"),
- Easy to clean/sanitize surfaces with special emphasis on materials resistant to graffiti and/or germs and viruses,
- Accessibility, use and ease of travel up to and around each digital kiosk for pedestrians,
- Modifications for intense heat (won't burn fingers using kiosk) and sun glare, anti-theft mechanisms.



## EXHIBIT C – SCOPE OF WORK

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### REVENUE SHARING

The Offeror shall provide a revenue model (EXHIBIT F) that will include guaranteed revenue share to the City as a percentage of gross revenues, and a minimum revenue guarantee (as a dollar amount).

For the submission of a proposed revenue model (EXHIBIT F), the Offeror should propose a percentage of gross advertising content revenues generated from the operation of the kiosks, which will be provided to the City by the Offeror.

The Offeror should also provide an estimate of the dollar amount that the percentage of gross advertising content revenues generated from the operation of the kiosks will produce and will be paid to the City each year.

Additionally, the Offeror should propose a minimum annual guarantee (MAG) payment to the City that would be paid to the City in lieu of a percentage of gross advertising content revenues generated from the operation of the kiosks, if the dollar amount that the percentage of gross advertising content revenues generated from the operation of the kiosks in a given year is less than the MAG amount. Alternatively, if the dollar amount that the percentage of gross advertising content revenues generated from the operation of the kiosks is greater than the MAG in a given year, then the Offeror would make payments to the City based on the percentage of gross advertising content revenues generated from the operation of the kiosks in lieu of a MAG payment.

### CONTENT AND DATA MANAGEMENT SYSTEM:

Offeror shall not have any physical or electronic network access to any City owned and operated wired or wireless network, including servers, databases, or applications. The Content and Data Management System must have the capability to maintain a secure web-based data management system that:

- Does not require local software installation,
- Has software updates that are automatic,
- Uses the latest encryption and security,
- Can integrate and consolidate data from multiple data sources,
- Provides remote access via common desktop and mobile web browsers,
- Access to the data management system is only controlled by those with usernames and passwords as required by the City standards,
- Enable the control of mechanisms from the central office to enable the quick and effective changing of data related to each malfunctioning kiosk and the replacement kiosk,
- Consolidate multi-system functions (kiosks, other user conveniences, and user sensors) into a common data management system,
- Integrates data streams from third-party providers as needed and shall export or stream data to third parties via batch process (CSV file formats) or real-time data



## EXHIBIT C – SCOPE OF WORK

CITY OF PHOENIX

feeds (XML web services) as needed,

- Capability to track & audit usage amounts by machine and relay information to the City,
- Notify service technicians and key personnel of faulty kiosks and status issues via text or e-mail,
- Must provide a full set of reports to include pedestrian counts, marketing impressions by sponsor/advertiser/product category, advertising revenue, daily, weekly, monthly, and annually, by kiosk, and by zone. Please list and provide examples of reports included,
- The data management system shall include details for each kiosk including, but not limited to:
  1. Delivery date
  2. Install date
  3. Revenue records
  4. Location codes
  5. Latitude/Longitude coordinates
  6. Pedestrian Counts
  7. Marketing Impressions
  8. Maintenance history
- System shall support a minimum 4G LTE, or better, wireless communication in real time to Offeror hosted content and data management system. Offeror shall detail a procedure to replace or upgrade the communications equipment,
- Kiosks must be able to operate in an independent network environment, such that each kiosk is wirelessly enabled to communicate with the City's software programs, (Contractor will not have access to the City's network)
- Software system and firmware update compatible,
- Spatial data, such as that in a back-end mapping system, shall be exportable into a shapefile, geodatabase or similarly, ESRI compatible format for allowed use in the City's GIS system,
- Provide a variety of reports, including but not limited to, financial activity, usage, maintenance, and user trends,
- A full GIS inventory of existing kiosks and platforms, including all equipment, must be provided,
- An application for City staff and/or the Offeror to maintain the GIS inventory must be provided. Data for this application must be available via a public-accessible map service to be used in mobile mapping applications.

### TRAINING

Offeror shall provide comprehensive hands-on training to the City staff on any requirements regarding proper operation and maintenance, associated software,



## EXHIBIT C – SCOPE OF WORK

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utilization of associated wireless communication system(s) and reporting tools. This training shall include, as a minimum, the following:

- Offeror shall provide yearly onsite training necessary for staff to maintain and operate kiosk technology after implementation if mutually determined,
- Offeror shall work with the City on strategies to increase any revenue components and marketing and communications impressions,
- At the City's convenience, Offeror shall conduct web-based training for staff on management software,
- Online video training shall be free of charge, and Offeror shall provide training manuals during training sessions and online,
- Updates to the training manual will be automatically available on the web-based management system,
- Offeror will designate a support technician to work with City staff from installation and activation and throughout the contract period,
- Training will be provided at a mutually determined City location and will include up to two additional training sessions (as needed), not to exceed four hours per session, within the first 30 days of implementation.

### **MAINTENANCE AND TECHNICAL SUPPORT**

Offeror shall provide maintenance and technical support for any kiosk or component manufactured and supplied by the Offeror as detailed in its proposal. This maintenance and technical support shall include, as a minimum:

- Maintenance of kiosks to ensure that all components are in good working order,
- Provide on-going support and service to City staff after installation for the duration of the contract period. Offerors shall detail the on-going support and services to be offered to the City for the full contract term,
- Detailed list of parts and components that can be serviced in-field and those requiring repair by Offeror,
- Identify proposed support staffing allocations during the installation phase and for ongoing support,
- Identify phone-based customer support availability and response times.

### **MARKETING, EDUCATION, AND PUBLIC OUTREACH**

Offeror shall establish a public outreach and education program to be implemented a minimum of 14 days prior to and during deployment and operation of the kiosks. Program development will include, but not be limited to:

- Identify key stakeholders affected by new technology and work in partnership with those identified,



## EXHIBIT C – SCOPE OF WORK

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- Identify best communication methods and deliverables as needed, including bilingual messages,
- Instructional videos, customized for the City,
- Deliver public outreach community presentations, as requested.
- Customized surveys to determine:
  - Ease of use
  - Positive vs. negative experience
  - Feedback on kiosk interface and potential modifications



**EXHIBIT D – LETTER OF CREDIT**

**CITY OF PHOENIX**

**EXHIBIT D – LETTER OF CREDIT**

A Letter of Credit is a financial instrument issued by a bank at the request of their customer. The City of Phoenix accepts Letters of Credit only from banks rated "A" or better by Moody's or Standard & Poor (exceptions must be approved by the Finance Department). Approvals from several departments are required before final acceptance of the Letter; this process may take up to 15 business days. Banks customarily maintain a standard format for Letters of Credit; the customer's bank and requested format must be submitted to Planning & Development prior to permit issue. The following elements are required in the Letter of Credit:

- Beneficiary:** City of Phoenix  
Street Transportation Department  
Financial Services Section  
200 W. Washington, 5th Floor  
Phoenix, AZ 85003
- Amount:** Dollar amount equal to the cost of work to be done in the right-of-way
- Principal:** Name of Company/Developer/Owner for whom letter is guarantee
- Bank Name/Address** Bank/Institution (name and address) upon which payment would be drawn
- Improvements:** Text identifying location/address and required improvements
- Expiration Deadlines:** One-year expiration, no auto-renewal
- Presentation of Draft:** Draw on local branch or presentable at a correspondent bank in Phoenix
- Partial Draft Clause:** Text must indicate that partial draft draws are permissible

BANK  
IRREVOCABLE STANDBY LETTER OF CREDIT  
NO. \_\_\_\_\_

To: City of Phoenix – Beneficiary  
Water Services Department  
  
\_\_\_\_\_  
200 W. Washington St., 9<sup>th</sup> Fl.  
Phoenix, Arizona 85003  
Attn: \_\_\_\_\_

		<p align="center"><b>CITY OF PHOENIX</b></p>
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Applicant: Company Name

Amount: \$ xxx.xx

Expiration Date: mm/dd/yyyy

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

1. A certificate purportedly signed by Water Services Director, or by any other director of the City of Phoenix Water Services Department, stating one or more of the following:

A. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. \_\_\_\_\_ as Company Name has failed to perform its obligations under or failed to comply with its Agreement No. \_\_\_\_\_, or any amendments thereto, or any replacement agreement, and the City requires payment under this Standby Letter of Credit of \$ \_\_\_\_\_.

B. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. \_\_\_\_\_ as Company Name has failed to provide a replacement Standby Letter of Credit prior to sixty (60) days before the expiration date as required by its Agreement No. \_\_\_\_\_ or any amendments thereto, or any replacement agreement, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ \_\_\_\_\_.

C. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. \_\_\_\_\_ as City of Phoenix has received notice from (name of bank) that the Standby Letter of Credit No. \_\_\_\_\_ will not be extended, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ \_\_\_\_\_.

		<b>CITY OF PHOENIX</b>
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2. This original Standby letter of credit for endorsement.

All documents may be forwarded to us by mail, overnight courier, hand delivered to our counters, or via telefacsimile ("fax"). Documents to be directed to our counters at: *[insert address as to counter location]*. Drawing presented to us via fax must be sent to our fax number *[insert – bank's fax number]* (each such drawing, a "Fax Drawing") provided, however, that Beneficiary confirm our receipt of any Fax Drawing by telephone to our telephone No. *[insert – bank's telephone number(s)]*.

If Beneficiary presents an improper drawing, we shall notify you in writing sent by overnight courier or by fax to (602) \_\_\_\_\_ that the demand was not effected in accordance with the terms and conditions of this Standby Letter of Credit, stating the reasons therefore and that we are holding any demand at your disposal. Upon being notified that the purported demand was not effected in conformity with this Standby Letter of Credit, you may attempt to correct any such nonconforming demand for payment.

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

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

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

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

		<b>CITY OF PHOENIX</b>
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[Bank]

By: \_\_\_\_\_  
Authorized Signature



**EXHIBIT E – SPECIAL TERMS AND CONDITIONS**

**CITY OF PHOENIX**

**EXHIBIT E – SPECIAL TERMS & CONDITIONS**

**1. TITLE:** All documents including but not limited to artwork, copy, posters, billboards, photographs, video tapes, audio tapes, systems designs, drawings, estimates, field notes, investigations, software, reports, diagrams, surveys, analyses, studies or any other original works of authorship created by Consultant in the performance of this Agreement are to be and remain “works for hire” under Title 17, United States Code, and the property of the City and all copyright ownership and authorship rights in the work(s) shall belong to the City pursuant to 17 U.S.C. § 201(b). In the event that the work(s) that is/are the subject matter of this Agreement is deemed to not be work for hire, then Consultant hereby assigns to the City all of the right, title and interest for the entire world in and to the work(s) and the copyright therein. Consultant agrees to cooperate and execute additional documents reasonably necessary to conform to its obligations under this paragraph.

All documents, together with all unused materials supplied by the City, are to be delivered to the City upon termination of this Agreement before the final payment is made to Consultant.

**2. SUPPLIER PROFILE CHANGES:** It is the responsibility of the Offeror to promptly update their profile in procurePHX at [www.phoenix.gov/procure](http://www.phoenix.gov/procure). If Offeror’s legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and contract termination.

**3. POST AWARD CONFERENCE:** A post-award conference will be held by the Procurement Officer or project manager prior to commencement of any work on the project. The purpose of this conference is to discuss critical elements of the work schedule and operational problems and procedures.

**4. PERFORMANCE INTERFERENCE:** Offeror shall notify the City’s department contact immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within 24 hours.

Department Contact: Chris Ewell, Deputy Street Department Director  
Phone: (602) 534-0592

**5. COOPERATIVE AGREEMENT:** In addition to the City and with approval of the Offeror, this contract may be extended for use by other municipalities and government agencies in the State of Arizona.

A current listing of eligible entities may be found at [www.mesaaz.gov/business/purchasing/save](http://www.mesaaz.gov/business/purchasing/save). Any such usage by other entities must



## EXHIBIT E – SPECIAL TERMS AND CONDITIONS

CITY OF PHOENIX

be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective entity. Orders placed by other agencies and payment thereof will be the sole responsibility of that entity. The City shall not be responsible for any disputes arising out of transactions made by other entities who utilize this solicitation.

- 6. EXCLUSIVE POSSESSION:** All services, information, computer program elements, reports, and other deliverables which may be created under this contract are the sole property of the City of Phoenix and will not be used by the Offeror or any other person except with prior written permission by the City.

**LICENSES AND PERMITS:** Offeror will keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Offeror as applicable to this contract.

- 7. ADVERTISING:** Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Agreement, the Technology Assets, or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this Agreement shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.
- 8. EQUIPMENT INSTALLATION:** All equipment shall be completely assembled and installed by the Offeror and ready for use on the City's property at various locations to be specified.
- 9. EVALUATION LITERATURE:** Bids submitted for products considered by the Offeror to be equal or better than the products specified herein must be submitted with technical literature and/or product brochures for the City's use to evaluate the offered products. Complete specifications, literature, illustrations, blueprints, photos etc. describing the offered product shall be included with the Offer. Offeror shall indicate any variation between the product offered and the literature submitted.
- 10. INSPECTION AND ACCEPTANCE:** Each product delivered shall be subject to complete inspection by the City prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Ten business days will be allowed for this process. If delivered items are unacceptable and returned to the Offeror prior to acceptance, an additional five business days will be allowed for inspection when subsequent delivery occurs. It shall be the Offeror's responsibility to pick up unacceptable products, correct the deficiencies, and return the product following the corrections.



**EXHIBIT E – SPECIAL TERMS AND CONDITIONS**

**CITY OF PHOENIX**

**11. COMMUNICATION IN ENGLISH:** It is mandatory that the Offeror’s lead person assigned to any City facility can speak, read, and write in English to effectively communicate with City staff.

**12. TRANSITION OF CONTRACT:** Offeror will, without limitation, provide important information to a successor Offeror and the City to ensure continuity of service at the required level of proficiency and agrees to provide to the City all files, supplies, data, records, and any other properties or materials of the City, which the City owns or has rights to pursuant to this contract and which are in the possession of Offeror. The provisions of this section will survive the expiration or termination of this contract.



**EXHIBIT F – REVENUE SCHEDULE**

**CITY OF PHOENIX**

**EXHIBIT F – REVENUE SCHEDULE**

Contract Year	Gross Advertising Revenue % Share to the City	Estimated Payment to the City through Revenue Share	Minimum Annual Guarantee payment to City
YEAR 1	%	\$	\$
YEAR 2	%	\$	\$
YEAR 3	%	\$	\$
YEAR 4	%	\$	\$
YEAR 5	%	\$	\$

Include Pro forma presenting proposed investment and financial return to the City. Investment and financial return should reflect the revenues generated from commissions, sponsorships, advertising revenue, other revenue and commission structures, capital investment and operational investments.



## EXHIBIT G – ADVERTISING GUIDELINES

CITY OF PHOENIX

### EXHIBIT G – ADVERTISING GUIDELINES

#### KIOSK ADVERTISING STANDARDS

- A. It is the intent of the City of Phoenix Street Transportation Department that all advertising on interactive digital kiosks are non-public forums and are set aside only for commercial advertisements or for City-specific services.
- B. The City's primary purpose for the kiosk advertisements, outside of informing the public about City services, is generating revenue.
- C. Kiosk advertising must be compliant with the Federal Trade Commission (FTC) Laws, specifically Section 5 of the FTC Act (truth-in-advertising).
  1. Under the law, claims in advertising must be truthful, cannot be deceptive or unfair, and must be evidence-based
  2. Disclosures must be clear and conspicuous
  3. Consumer protection laws must be followed
- D. Other than for City-specific services, no advertising will be accepted for use on any kiosk that fails to comply with the following standards:
  1. The subject matter of and the speech in the advertisement must be limited to a proposed commercial transaction.
  2. The advertising must not:
    - a. Be false, misleading, or deceptive.
    - b. Relate to an illegal activity.
    - c. Contain non-commercial speech.
    - d. Advertise or depict, by language or graphics, violence or anti-social behavior.
    - e. Advertise or depict language, gestures, conduct, or graphical representations that are obscene, pornographic, vulgar, profane, or scatological.
    - f. Depict a nude or seminude person, as those terms are defined in Section 11-811, Arizona Revised Statutes, or the exposed buttocks of any person.
    - g. Depict, relate to, or reference a website or other medium that relates to specified sexual activities or specified anatomical areas



**EXHIBIT E – SPECIAL TERMS AND CONDITIONS**

**CITY OF PHOENIX**

as those terms are defined in Section 11-811, Arizona Revised Statutes.

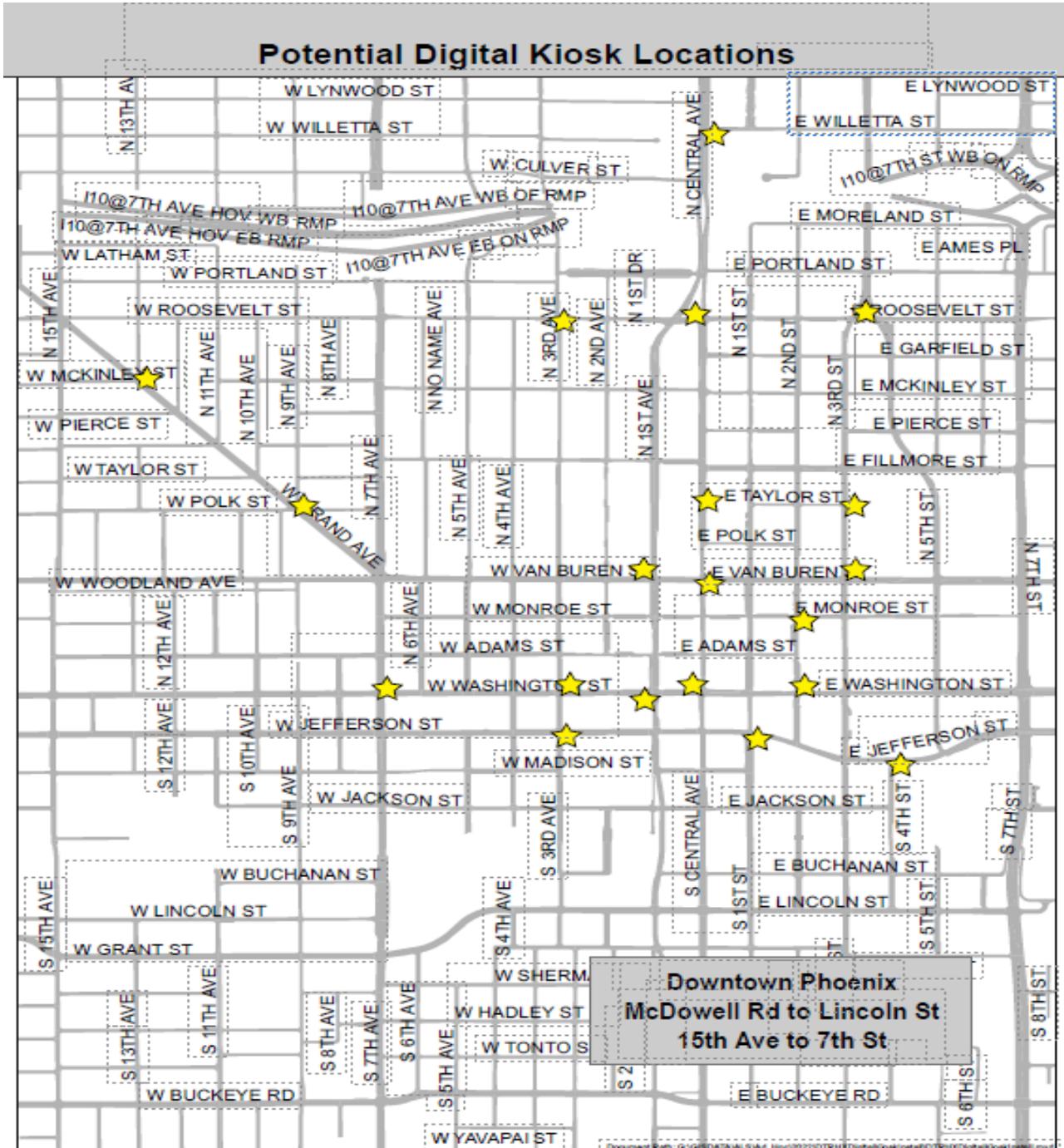
- h. Advertise or depict the use of tobacco, vaping or smoking products, including if the product is advertised or depicted in a non-smoking form.
- i. Advertise or depict the use of spirituous liquor as that term is defined in Section 4-101, Arizona Revised Statutes:
  - i. On kiosks located less than 600 feet from a church or similar structure of worship, or school building.



# EXHIBIT H – LOCATIONS OF KIOSKS

CITY OF PHOENIX

## EXHIBIT H – LOCATIONS OF KIOSKS (MAP)



	<b>AFFIDAVIT</b>	<b>CITY OF PHOENIX</b>
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## **AFFIDAVIT**

The undersigned Offeror hereby submits to the City of Phoenix (City) the enclosed proposal based upon all terms and conditions set forth in the City's Request for Proposals (RFP) and referenced materials. Offeror further specifically agrees hereby to provide services in the manner set forth in the proposal submitted by the Offeror.

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

1. The City is relying on Offeror's submitted information and the representation that Offeror has the capability to successfully undertake and complete the responsibilities and obligations submitted in its proposal and in the resulting contract.
2. The City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by Offeror.
3. Offeror has read and fully understands all the provisions and conditions set forth in the RFP documents, upon which its proposal is based.
4. The forms and information requested in the RFP are complete and made part of the proposal. The City is not responsible for any Offeror errors or omissions.
5. This proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the proposal deadline but may not be withdrawn after such date and time.
6. The City reserves the right to reject any and all proposals and to accept the proposal that, in its judgment, will provide the best quality development to the City.
7. This proposal is valid for a minimum of 120 days after the RFP proposal deadline.
8. All costs incurred by Offeror in connection with this proposal shall be borne solely by Offeror. Under no circumstances shall the City be responsible for any costs associated with Offeror's proposal or the RFP process.
9. Offeror has not in any manner, directly or indirectly, conspired with any person or

party to unfairly compete or compromise the competitive nature of the RFP process.

- 10. The contents of this proposal 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 proposal.
- 11. To the best of the Offeror's knowledge, the information provided in its proposal is true and correct and neither the undersigned Offeror nor any partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.

**12. COPIES**

Please submit one electronic copy of the Submittal Section and all other required documentation.

**Please submit only the Submittal Section, do not submit a copy of the entire solicitation document.** This offer will remain in effect for a period of 180 calendar days from the bid opening date and is irrevocable unless it is in the City's best interest to do so.

**13. REFERENCES**

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

Reference 1:

Company Name	
Contact Name	
Contact Title	
Email	
Phone	
Website	
Project Description	

Reference 2:

Company Name	
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**AFFIDAVIT**

**CITY OF PHOENIX**

Contact Name	
Contact Title	
Email	
Phone	
Website	
Project Description	

Reference 3:

Company Name	
Contact Name	
Contact Title	
Email	
Phone	
Website	
Project Description	

	<b>SIGNATURE PAGE</b>	<b>CITY OF PHOENIX</b>
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**Signature(s)**

Offeror's Contracting Entity (Legal Name<sup>1</sup>): \_\_\_\_\_

*<sup>1</sup>The successful Offeror must be authorized to transact business in Arizona and be in good standing prior to contract award.*

Printed Name of Authorized Representative\*: \_\_\_\_\_

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

Business Mailing Address: \_\_\_\_\_

Telephone and Email Address: \_\_\_\_\_

Signature: \_\_\_\_\_

*\*Proposal must be signed by an individual authorized to contractually bind the Offeror.*

Name of Joint Venture Partner (if applicable): \_\_\_\_\_

Printed Name of Authorized Representative\*: \_\_\_\_\_

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

Business Mailing Address: \_\_\_\_\_

Telephone and email Address: \_\_\_\_\_

Signature: \_\_\_\_\_

*\*Proposal must be signed by an individual authorized to contractually bind the joint venture partner.*



**SOLICITATION TRANSPARENCY FORM**

**CITY OF PHOENIX**

This form must be signed and submitted to the City and all questions must be answered (or N/A) or your Offer may be considered non-responsive.

**1. Name of person submitting this disclosure form.**

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First	MI	Last	Suffix
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**2. Contract Information**

Solicitation # or Name:

**3. Name of individual(s) or entity(ies) seeking a contract with the City (i.e. parties to the Contract)**

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**4. List any individuals(s) or entity(ies) that are owners, partners, parent, sublessees, joint venture, or subsidiaries of the individual or entity listed in Question 3. Please include all Board members, executive committee members and officers for each entry. If not applicable, indicate N/A.**

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**5. List any individuals or entities that will be subcontractors on this contract or indicate N/A.**

- Subcontractors may be retained, but not known as of the time of this submission.
- List of subcontracts, including the name of the owner(s) and business name:

**6. List any attorney, lobbyist, or consultant retained by any individuals listed in Questions 3, 4, or 5 to assist in the proposal or seeking the resulting contract. If none, indicate N/A.**

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## SOLICITATION TRANSPARENCY FORM

CITY OF PHOENIX

### 7. Disclosure of Conflict of Interest:

#### A. City Code Section 43-34

Are you aware of any fact(s) with regard to this solicitation or resulting contract that would raise a “conflict of interest” issue under City Code Section 43-34?

“An elected City official or a City employee shall not represent any person or business for compensation before the City regarding any part of a procurement, including any resulting contract, if during the time the elected official is or was in office or the employee is or was employed by the City such elected official or employee played a material or significant role in the development of the solicitation, any other part of the procurement, or the contract award.”

- I am not aware of any conflict(s) of interest under City Code Section 43-34.
- I am aware of the following potential or actual conflict(s) of interest:

#### B. ARS Sections 38-501 et. Seq. & City Charter Chapter 11

State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the contract. This prohibition extends to subcontracts on City contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See A.R.S. Sections 38-501 through 38-511, for more information (City Charter, Chapter 11, applies the state conflict-of-interest law to City employees).

Please note that any contract in place at the time a person becomes a public officer or employee may remain in effect. But the contract may not be amended, extended, modified, or changed in any manner during the officer’s or employee’s city service without following city administrative regulations.



## SOLICITATION TRANSPARENCY FORM

CITY OF PHOENIX

Are you aware of any fact(s) with regard to this contract that would raise a “conflict of interest” issue under A.R.S. Sections 38-501 through 38-511 (See Arizona Revised Statutes regarding conflict of interest at [www.azleg.gov](http://www.azleg.gov)).

- I am not aware of any conflict(s) of interest under Arizona Revised Statutes Sections 38-501 through 38-511.
- I am aware of the following conflict(s) of interest:

### 8. Acknowledgements

#### A. Solicitation Transparency Policy – No Contact with City Officials or Staff During Evaluation

- I understand that a person or entity who seeks or applies for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the contract after a solicitation has been posted.
- This “no-contact” provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

#### B. Fraud Prevention and Reporting Policy

- I acknowledge that the City has a fraud prevention and reporting policy and takes fraud seriously. I will report fraud, suspicion of fraud, or any other inappropriate action to: telephone no. 602-261-8999 or 602-534-5500 (TDD); or [aud.integrity.line@phoenix.gov](mailto:aud.integrity.line@phoenix.gov).

The purpose of the fraud policy is to maintain the City's high ethical standards. The policy includes a way for our business partners to report wrongdoing or bad behavior. Suspected fraud should be reported immediately to the Phoenix Integrity Line. The City has adopted a zero-tolerance policy regarding fraud.



**SOLICITATION TRANSPARENCY FORM**

**CITY OF PHOENIX**

**OATH**

I affirm that the statements contained in this form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.  
Should any of the answers to the above questions change during the course of the contract, particularly as it relates to any changes in ownership, applicant agrees to update this form with the new information within 30 days of such changes. Failure to do so may be deemed a breach of contract.

**PRINT NAME**

**TITLE**

**SIGNATURE**

**DATE**

**COMPANY (CORPORATION, LLC, ETC.) NAME and DBA**