

CITY COUNCIL REPORT



Meeting Date: Monday, July 1, 2013
 General Plan Element: *Neighborhoods*
 General Plan Goal: *Enhance and protect neighborhoods*

ACTION

Subject statement. Public Defender Services for City Court (13RP025)

Authorize professional service contract 2013-097-COS for Silva Law Firm; 2013-098-COS for Ana Maribet Sanchez, P.L.L.C.; 2013-099-COS for Bain & Lauritano, P.C.; 2013-100-COS for Elkie Law Offices, P.C.; 2013-101-COS for the Law Office of Alexander Y. Benikov, P.L.L.C.; 2013-103-COS for the Law Office of Henry J. Clark, Jr.; and 2013-104-COS for the Law office of Chad D. Niven.

BACKGROUND

Criminal defense representation must be provided through the services of a Public Defender where such legal representation is required. The Public Defender shall be licensed to practice law in the State of Arizona, be a member in good standing in the State Bar of Arizona, be professionally qualified to provide misdemeanor criminal defense representation, and is ready, willing and able to do so.

Authority: The United States Constitution, the Arizona Constitution, and the Rules of Criminal Procedure for the State of Arizona, Section III Rights of Parties, Rule 6- Attorneys, Appointment of Counsel

The Scottsdale City Court previously contracted for public defender services with qualified individuals. The contracts with these individuals expired. Therefore, Public Defender Request for Proposal number 13RP025 was issued and solicited applicants with the intent of contracting the legal services of qualified public defenders.

ANALYSIS & ASSESSMENT

Recent Staff Action

The Court has provided or assigned a public defender to 778 cases in FY 2011, 709 cases in 2012, and 818 cases for FY 2013. The Court currently provides, and will continue to provide, Spanish speaking public defenders to those defendants who require this service. Based on the past use of public defender services, the Court believes that the recommend eight public defenders can provide adequate coverage while maintaining compliance with caseload limits.

Policy Implications

The court requires defendants seeking the appointment of a public defender to fill out a financial application for judicial review. Upon review of the application and determination of indigence, the indigent defendant shall be entitled to have an attorney appointed to represent him or her in any criminal proceeding which may result in punishment by loss of liberty (jail) or, in any other criminal proceeding in which the court concludes that the interests of justice so requires.

In making a determination whether or not a defendant is indigent, the court considers such factors as income, source of income, property owned, outstanding obligations, number and ages of any dependents, and other sources of family income. It does not consider the fact that a person has been released on bail or the ability of friends or relatives, not legally responsible for him, to obtain services of counsel.

Significant Issues to be Addressed

None

Community Involvement

Not applicable

RESOURCE IMPACTS

Available funding

Public defenders are paid a flat \$250 per case and are limited to 300 cases per year. Expenditures for FY 2014 are budgeted in the Court's operating fund 100-01080-52141 in the amount of \$190,000.

Staffing, Workload Impact

The workload impact to court staff is the processing of the applications and orders for public defenders, the processing of requests for payment from the public defenders, and the maintenance of public defender contracts.

Maintenance Requirements

Not applicable

Future Budget Implications

Funding of at least \$190,000 will be requested for Public Defender costs for future budget years.

Cost Recovery Options

If the court finds that such person has financial resources which enable the defendant to offset in part the costs of the legal services to be provided, the court will order the defendant to pay the court \$250 to offset the cost to the city. Additionally, the court assesses a \$25.00 administrative fee for costs associated with administering public defender services for indigent defendants.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

The Court recommends that the City Council authorize the eight professional service contracts requested.

Description of Option B

If the City Council chooses not to approve the eight professional service contracts, the Court would be unable to provide for the just and speedy determination of many criminal proceedings. The Court would also be delayed in or prohibited from; securing the simplicity in procedures, fairness in administration, the elimination of unnecessary delay and expense, and protecting the fundamental rights of the individual.

Proposed Next Steps

Upon the approval of the eight public defenders, the City Court will proceed with the contracting process, training the public defender on court processes, and finalizing all details so the public defender contracts are in effect July 2, 2013.

RESPONSIBLE DEPARTMENT(S)

City Court

STAFF CONTACTS (S)

Julie Dybas, Court Administrator, 480-312-2775, JDybas@ScottsdaleAZ.gov

Jack Miller, Sr. Mgmt. Analyst (Contract Administrator) 480-312-7824 JMiller@ScottsdaleAZ.gov

APPROVED BY

 
Presiding Judge Joseph Olcavage Date

480-312-2775, c/o JDybas@ScottsdaleAZ.gov

ATTACHMENTS

1. Resolution 9471
2. Contract No. 2013-097-COS
3. Contract No. 2013-098-COS
4. Contract No. 2013-099-COS
5. Contract No. 2013-100-COS
6. Contract No. 2013-101-COS
7. Contract No. 2013-102-COS
8. Contract No. 2013-103-COS
9. Contract No. 2013-104-COS
10. RFP 13RP025 – City Court Public Defender Services

RESOLUTION NO. 9471

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA, AUTHORIZING PROFESSIONAL SERVICES CONTRACTS FOR THE PROVISION OF LEGAL REPRESENTATION OF INDIGENT AND QUASI-INDIGENT DEFENDANTS IN SCOTTSDALE CITY COURT.

WHEREAS, the City of Scottsdale, by and through the Scottsdale City Court ("Court"), desires to contract for the provision of criminal defense representation of indigent and quasi-indigent defendants appearing before the Court, as and where required by law; and

WHEREAS, as a result of 13RP025 for Public Defender Services, the City desires to execute separate contracts with the Silva Law Firm, P.C., Ana Maribet Sanchez, PLLC, Bain & Lauritano, P.C., Elkie Law Offices, P.C., the Law Office of Alexander Y. Benikov, PLLC, the Law Office of V. Tyler Harrison, PLLC, the Law Office of Henry J. Clark, Jr., and the Law Office of Chad D. Niven that set forth the terms and conditions under which each of the attorneys will provide legal representation of indigent and quasi-indigent defendants appearing before the Court;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. The Mayor is hereby authorized and directed to execute, on behalf of the City of Scottsdale, the following Professional Services Contracts between the City of Scottsdale and the identified entities for the provision of legal representation of indigent and quasi-indigent defendants appearing before Scottsdale City Court:

- Contract No. 2013-097-COS with the Silva Law Firm, P.C.;
- Contract No. 2013-098-COS with Ana Maribet Sanchez, PLLC;
- Contract No. 2013-099-COS with Bain & Lauritano, P.C.;
- Contract No. 2013-100-COS with Elkie Law Offices, P.C.;
- Contract No. 2013-101-COS with the Law Office of Alexander Y. Benikov, PLLC;
- Contract No. 2013-102-COS with the Law Office of V. Tyler Harrison, PLLC;
- Contract No. 2013-103-COS with the Law Office of Henry J. Clark, Jr.; and
- Contract No. 2013-104-COS with the Law Office of Chad D. Niven.

Resolution 9471
July 1, 2013

PASSED AND ADOPTED by the Council of the City of Scottsdale, Arizona, this 1st day of July, 2013.

CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Carolyn Jagger, City Clerk

W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:

Jennifer Pollock
Bruce Washburn, City Attorney
By: Jennifer Pollock
Assistant City Attorney



**CITY OF SCOTTSDALE
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, entered into this 1st day of July, 2013, between the City of Scottsdale, an Arizona municipal corporation, the "City", and The Silva Law Firm, P.C., a Corporation of the State of Arizona the "Consultant".

WITNESSETH

The Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

The Consultant is duly qualified to perform the requested services; and

In consideration of the mutual promises and obligations stated in this Contract, the parties agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant will act under the authority and approval of the Contract Administrator for the City, as named below, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The entire Request for Proposal No. 13RP025 identified as City Court Public Defender Services is incorporated into this Contract by this reference as fully as if written out below. Consultant's proposal submitted in response to Request for Proposal Number 13RP025 and dated April 15, 2013 is incorporated into this Contract by this reference as fully as if written out below.

If any provision incorporated by reference from the Request for Proposal conflicts with any provision of the Consultant's proposal, the provision of the Request for Proposal will control. If any provision of the Consultant's proposal conflicts with any provision of this Contract, this Contract will control.

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task must be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City will provide all necessary information to the Consultant for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 BILLING RECORDS, AUDIT

The time spent for each task must be recorded and submitted to the Contract Administrator. Consultant must maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and makes these materials available for audit by the City in accordance with Section 4.7 of this Contract.

2.2 FEE SCHEDULE

The Contractor shall receive payment of the sum of two hundred and fifty dollars (\$250.00) per case assigned.

The Contractor shall be paid only upon submittal of an invoice by Scottsdale City Court where City of Scottsdale Court staff will verify the case number and proof of the Contractor being appointed to the case.

2.3 PAYMENT APPROVAL

All charges must be approved by the Contract Administrator before payment.

2.3.1 PAYMENT TERMS

The City of Scottsdale's payment terms are payment within thirty (30) days after approval by Contract Administrator. In no event will payment be made prior to receipt of an original invoice containing invoice and proper reference numbers. The City is not liable for delays in payment caused by failure of the vendor or contractor to send invoice to the address specified below:

City of Scottsdale
Accounts Payable
7447 E. Indian School Road, Ste 220
Scottsdale, Arizona 85251-4468

2.4 PRICE ADJUSTMENT

Fee increases may only be requested by the Contractor, thirty (30) days prior to the anniversary date of any such resulting Professional Services Contract.

Failure of the Contractor to request a fee increase thirty (30) days prior to the anniversary date of the Professional Services Contract may result in the denial of any fee increase requested.

Fee increases will become effective only after approval by the City of Scottsdale Presiding Judge and will be effective for only one year from the date of approval.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

The term of this Contract shall be for a one (1) year period from the effective date-the date of approval by the City Council.

The City and Contractor may mutually agree to extend this Contract for four (4) additional one (1) year periods, upon the recommendation of the Contract Administrator, concurrence of the Purchasing Director.

3.2 TERMINATION

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

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

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this contract immediately upon giving notice to the Consultant.

If the City cancels this Contract or any part of the Contract services, the City will notify the Consultant in writing, and upon receiving notice, the Consultant must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Consultant must deliver to the City all drawings, special provisions, reports, and other documents, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be at the City's sole responsibility.

The Consultant must appraise the work it has completed and submit its appraisal to the City for evaluation. At that time, the Consultant will be entitled to be paid for Work performed and accepted by the City before the default.

If the Consultant fails to fulfill in a timely and proper manner its obligations, or if the Consultant violates any of the terms of this Contract, the City may withhold any payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section.

3.3 FUNDS APPROPRIATION

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

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the specified services. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract is governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

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

4.5 SUCCESSORS AND ASSIGNS

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

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City will be Jack Miller or designee. The Contract Administrator will oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements. The Consultant must channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

The City may audit all of the Consultant's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this contract must be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees in accordance with the execution of the contract. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Consultant's records and personnel in accordance with the provisions of this section throughout the term of this contract and for a period of 3 years after last or final payment.

4.7 RECORDS AND AUDIT RIGHTS – CONT'D

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

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

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to cancel this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

4.11 CONFLICT OF INTEREST – CONT'D

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

4.12 NOTICES

All notices or demands required to be given in accordance with the terms of this Contract must be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this section.

In the case of Consultant:

The Silva Law Firm, P.C.
Scott C. Silva
90 South Kyrene Road
Chandler, AZ 85226
480-456-1985

In the case of City:

City of Scottsdale
City Court
Jack Miller, Contract Administrator
3700 North 75th Street
Scottsdale, AZ 85251
480-312-7824

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail. Notice by facsimile or electronic mail is not adequate notice.

4.13 FORCE MAJEURE

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

4.14 TAXES

Consultant is solely responsible for any and all tax obligations which may result out of the Consultants performance of this contract. The City has no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.15 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without first obtaining the written approval for the advertising or publicity by the City Contract Administrator.

4.16 COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract will be considered to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

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

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

The Consultant will pay its Subcontractors within 7 calendar days of receipt of each progress payment from the City. The Consultant will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Consultant will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Consultant. No Contract between the Consultant and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

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

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

4.19 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If any changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment will be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

4.20 CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

4.21 COMPLIANCE WITH FEDERAL AND STATE LAWS

The Consultant understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. In addition, the Consultant understands and acknowledges the applicability of A.R.S. §34-301 and 34-302.

4.22 IMMIGRATION LAW COMPLIANCE

Under the provisions of A.R.S. §41-4401, the Consultant warrants to the City that the Consultant and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Consultant and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

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

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

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

4.23 LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS

A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that verifies that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS / INDIVIDUALS / SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations Limited Partnerships or General Partnerships)*

By submitting your quote, bid, proposal and/or indicating your desire to enter in a contract with the City you are agreeing that if you are selected as the awardee and meet the criteria of a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation to verify of that statement. Types of acceptable documentation copies are an Arizona Drivers License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion before to issuing any contract.

4.23 LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS – CONT'D

If you have previously done business with the City and have already filed the above Affidavit with copies of an acceptable documentation please indicate when you filed the affidavit. If your approved Affidavit is already on file with the City, you have complied with this requirement.

If you fail to provide a completed Affidavit and accompanying copy of your acceptable documentation, or if you do not advise the City of your previous filing within 10 calendar days after receiving the City's request you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/Purchasing> on the Vendor Resources page at the bottom right under Forms.

4.24 CONTRACTS WITH SUDAN AND IRAN

In accordance with A.R.S. §35-391.06 and 35-393.06, the contractor certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

4.25 NO PREFERENTIAL TREATMENT OR DISCRIMINATION

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

4.26 INDEMNIFICATION

To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subcontractor's employees.

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

4.27 OWNERSHIP OF PROJECT DOCUMENTS

All documents, including but not limited to notes, records, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Consultant.

When the work detail covers only the preparation of preliminary reports or documents, there will be no limitations upon the City concerning use of the ideas or recommendations in the reports or documents. The City will release the Consultant from any liability for the preparation and use of preliminary reports or documents.

4.27 OWNERSHIP OF PROJECT DOCUMENTS – CONT'D

Any use of the project documents for purposes other than intended under this Contract will be at the sole risk of the City, and the Consultant will not be liable for any losses or injuries arising out of that use.

4.28 COMPLETENESS AND ACCURACY

The Consultant will be responsible for the completeness and accuracy of work prepared by the Consultant and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Consultant. Additional work or construction added to the project will not be the responsibility of the Consultant unless the need for additional work or construction was created by any error, omission, or negligent act of the Consultant. The City's acceptance of the Consultant's work will not relieve the Consultant of any of its responsibilities. The professional standard to which the Consultant is held will be that of a similar Consultant as practiced in the State of Arizona.

4.29 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES

The total Scope of the Consulting Services to be performed is stated in this Contract. Any services requested outside the scope of work are additional services. The Consultant will not perform these additional services without a written Change Order approved by the City. If the Consultant performs additional services without a Change Order, the Consultant will not receive any additional compensation.

4.30 EQUAL EMPLOYMENT OPPORTUNITY

The Consultant will comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). The Consultant will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

4.31 EVALUATION OF CONSULTANT'S PERFORMANCE

The Consultant will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (linework, lettering, etc.)
- Working relationship with City staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

4.32 THIRD PARTY BENEFICIARY

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the Consultant, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and the Consultant and not for the benefit of any other party.

4.33 CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS

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

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

5.0 INSURANCE

A current standard Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.

5.1 Insurance Representations and Requirements

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

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

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

- 5.1.4 Claims Made:** In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.
- 5.1.5 Policy Deductibles and or Self Insured Retentions:** The policy requirements may provide coverage which contain deductibles or self insured retention amounts. These deductibles or self insured retention must not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant is solely responsible for any deductible or self insured retention amount. City of Scottsdale, at its option, may require Consultant to secure payment of the deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors:** If any work under this Contract is subcontracted in any way, Consultant must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as stated in this Contract protecting City of Scottsdale and Consultant. Consultant is responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance:** Before starting any work or services under this Contract, Consultant must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that this coverage and the provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it is Consultant's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:
1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
 2. Consultant's insurance must be primary insurance as respects performance of subject contract.
 3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Contract.
 4. If the Consultant receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Consultant's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

5.2 Required Coverage

- 5.2.1 Commercial General Liability:** Consultant must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.2 Professional Liability:** If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims.
- 5.2.3 Vehicle Liability:** Consultant must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.4 Workers Compensation Insurance:** Consultant must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 SEVERABILITY AND AUTHORITY

6.1 SEVERABILITY

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 AUTHORITY

Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

7.0 REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at www.IRS.gov under their forms section.

The City of Scottsdale by its Mayor and City Clerk has subscribed their names this 1st day of July, 2013.

CITY OF SCOTTSDALE

By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

By: _____
Carolyn Jagger, City Clerk

CONSULTANT:

The Silva Law Firm, P.C.
90 South Kyrene Road
Chandler, AZ 85226
Phone: 480-456-1985 / Fax: 866-456-4410

By: _____
Scott C. Silva

CITY OF SCOTTSDALE REVIEW:

By: _____
James Flanagan
Purchasing Director

CITY CONTRACT ADMINISTRATOR:

By: _____
Jack Miller
Senior Management Analyst

By: _____
Edward M. Howard
Risk Management Director

APPROVED AS TO FORM:

Bruce Washburn, City Attorney
By: _____
John C. Shafer, III
Assistant City Attorney



**CITY OF SCOTTSDALE
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, entered into this 1st day of July, 2013, between the City of Scottsdale, an Arizona municipal corporation, the "City", and Ana Maribet Sanchez, PLLC, a Corporation of the State of Arizona the "Consultant".

WITNESSETH

The Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

The Consultant is duly qualified to perform the requested services; and

In consideration of the mutual promises and obligations stated in this Contract, the parties agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant will act under the authority and approval of the Contract Administrator for the City, as named below, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The entire Request for Proposal No. 13RP025 identified as City Court Public Defender Services is incorporated into this Contract by this reference as fully as if written out below. Consultant's proposal submitted in response to Request for Proposal Number 13RP025 and dated April 15, 2013 is incorporated into this Contract by this reference as fully as if written out below.

If any provision incorporated by reference from the Request for Proposal conflicts with any provision of the Consultant's proposal, the provision of the Request for Proposal will control. If any provision of the Consultant's proposal conflicts with any provision of this Contract, this Contract will control.

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task must be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City will provide all necessary information to the Consultant for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 BILLING RECORDS, AUDIT

The time spent for each task must be recorded and submitted to the Contract Administrator. Consultant must maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and makes these materials available for audit by the City in accordance with Section 4.7 of this Contract.

2.2 FEE SCHEDULE

The Contractor shall receive payment of the sum of two hundred and fifty dollars (\$250.00) per case assigned.

The Contractor shall be paid only upon submittal of an invoice by Scottsdale City Court where City of Scottsdale Court staff will verify the case number and proof of the Contractor being appointed to the case.

2.3 PAYMENT APPROVAL

All charges must be approved by the Contract Administrator before payment.

2.3.1 PAYMENT TERMS

The City of Scottsdale's payment terms are payment within thirty (30) days after approval by Contract Administrator. In no event will payment be made prior to receipt of an original invoice containing invoice and proper reference numbers. The City is not liable for delays in payment caused by failure of the vendor or contractor to send invoice to the address specified below:

City of Scottsdale
Accounts Payable
7447 E. Indian School Road, Ste 220
Scottsdale, Arizona 85251-4468

2.4 PRICE ADJUSTMENT

Fee increases may only be requested by the Contractor, thirty (30) days prior to the anniversary date of any such resulting Professional Services Contract.

Failure of the Contractor to request a fee increase thirty (30) days prior to the anniversary date of the Professional Services Contract may result in the denial of any fee increase requested.

Fee increases will become effective only after approval by the City of Scottsdale Presiding Judge and will be effective for only one year from the date of approval.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

The term of this Contract shall be for a one (1) year period from the effective date-the date approved by City Council

The City and Contractor may mutually agree to extend this Contract for four (4) additional one (1) year periods, upon the recommendation of the Contract Administrator, concurrence of the Purchasing Director.

3.2 TERMINATION

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

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

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this contract immediately upon giving notice to the Consultant.

If the City cancels this Contract or any part of the Contract services, the City will notify the Consultant in writing, and upon receiving notice, the Consultant must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Consultant must deliver to the City all drawings, special provisions, reports, and other documents, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be at the City's sole responsibility.

The Consultant must appraise the work it has completed and submit its appraisal to the City for evaluation. At that time, the Consultant will be entitled to be paid for Work performed and accepted by the City before the default.

If the Consultant fails to fulfill in a timely and proper manner its obligations, or if the Consultant violates any of the terms of this Contract, the City may withhold any payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section.

3.3 FUNDS APPROPRIATION

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

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the specified services. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract is governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

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

4.5 SUCCESSORS AND ASSIGNS

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

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City will be Jack Miller or designee. The Contract Administrator will oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements. The Consultant must channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

The City may audit all of the Consultant's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this contract must be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees in accordance with the execution of the contract. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Consultant's records and personnel in accordance with the provisions of this section throughout the term of this contract and for a period of 3 years after last or final payment.

4.7 RECORDS AND AUDIT RIGHTS – CONT'D

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

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

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to cancel this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

4.11 CONFLICT OF INTEREST – CONT'D

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

4.12 NOTICES

All notices or demands required to be given in accordance with the terms of this Contract must be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this section.

In the case of Consultant:

Ana Maribet Sanchez, PLLC
Anna M. Sanchez
668 N. 44th St., #300
Phoenix, AZ 85008
602-672-6887

In the case of City:

City of Scottsdale
City Court
Jack Miller, Contract Administrator
3700 North 75th Street
Scottsdale, AZ 85251
480-312-7824

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail. Notice by facsimile or electronic mail is not adequate notice.

4.13 FORCE MAJEURE

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

4.14 TAXES

Consultant is solely responsible for any and all tax obligations which may result out of the Consultants performance of this contract. The City has no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.15 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without first obtaining the written approval for the advertising or publicity by the City Contract Administrator.

4.16 COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract will be considered to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

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

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

The Consultant will pay its Subcontractors within 7 calendar days of receipt of each progress payment from the City. The Consultant will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Consultant will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Consultant. No Contract between the Consultant and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

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

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

4.19 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If any changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment will be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

4.20 CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

4.21 COMPLIANCE WITH FEDERAL AND STATE LAWS

The Consultant understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. In addition, the Consultant understands and acknowledges the applicability of A.R.S. §34-301 and 34-302.

4.22 IMMIGRATION LAW COMPLIANCE

Under the provisions of A.R.S. §41-4401, the Consultant warrants to the City that the Consultant and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Consultant and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

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

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

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

4.23 LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS

A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that verifies that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS / INDIVIDUALS / SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations Limited Partnerships or General Partnerships)*

By submitting your quote, bid, proposal and/or indicating your desire to enter in a contract with the City you are agreeing that if you are selected as the awardee and meet the criteria of a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation to verify of that statement. Types of acceptable documentation copies are an Arizona Drivers License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion before to issuing any contract.

4.23 *LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS – CONT'D*

If you have previously done business with the City and have already filed the above Affidavit with copies of an acceptable documentation please indicate when you filed the affidavit. If your approved Affidavit is already on file with the City, you have complied with this requirement.

If you fail to provide a completed Affidavit and accompanying copy of your acceptable documentation, or if you do not advise the City of your previous filing within 10 calendar days after receiving the City's request you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/Purchasing> on the Vendor Resources page at the bottom right under Forms.

4.24 *CONTRACTS WITH SUDAN AND IRAN*

In accordance with A.R.S. §35-391.06 and 35-393.06, the contractor certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

4.25 *NO PREFERENTIAL TREATMENT OR DISCRIMINATION*

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

4.26 *INDEMNIFICATION*

To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subcontractor's employees.

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

4.27 *OWNERSHIP OF PROJECT DOCUMENTS*

All documents, including but not limited to notes, records, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Consultant.

When the work detail covers only the preparation of preliminary reports or documents, there will be no limitations upon the City concerning use of the ideas or recommendations in the reports or documents. The City will release the Consultant from any liability for the preparation and use of preliminary reports or documents.

4.27 OWNERSHIP OF PROJECT DOCUMENTS – CONT'D

Any use of the project documents for purposes other than intended under this Contract will be at the sole risk of the City, and the Consultant will not be liable for any losses or injuries arising out of that use.

4.28 COMPLETENESS AND ACCURACY

The Consultant will be responsible for the completeness and accuracy of work prepared by the Consultant and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Consultant. Additional work or construction added to the project will not be the responsibility of the Consultant unless the need for additional work or construction was created by any error, omission, or negligent act of the Consultant. The City's acceptance of the Consultant's work will not relieve the Consultant of any of its responsibilities. The professional standard to which the Consultant is held will be that of a similar Consultant as practiced in the State of Arizona.

4.29 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES

The total Scope of the Consulting Services to be performed is stated in this Contract. Any services requested outside the scope of work are additional services. The Consultant will not perform these additional services without a written Change Order approved by the City. If the Consultant performs additional services without a Change Order, the Consultant will not receive any additional compensation.

4.30 EQUAL EMPLOYMENT OPPORTUNITY

The Consultant will comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). The Consultant will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

4.31 EVALUATION OF CONSULTANT'S PERFORMANCE

The Consultant will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (linework, lettering, etc.)
- Working relationship with City staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

4.32 THIRD PARTY BENEFICIARY

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the Consultant, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and the Consultant and not for the benefit of any other party.

4.33 CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS

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

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

5.0 INSURANCE

A current standard Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.

5.1 Insurance Representations and Requirements

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

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

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

- 5.1.4 Claims Made:** In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.
- 5.1.5 Policy Deductibles and or Self Insured Retentions:** The policy requirements may provide coverage which contain deductibles or self insured retention amounts. These deductibles or self insured retention must not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant is solely responsible for any deductible or self insured retention amount. City of Scottsdale, at its option, may require Consultant to secure payment of the deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors:** If any work under this Contract is subcontracted in any way, Consultant must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as stated in this Contract protecting City of Scottsdale and Consultant. Consultant is responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance:** Before starting any work or services under this Contract, Consultant must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that this coverage and the provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it is Consultant's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:
1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
 2. Consultant's insurance must be primary insurance as respects performance of subject contract.
 3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Contract.
 4. If the Consultant receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Consultant's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

5.2 Required Coverage

- 5.2.1 Commercial General Liability:** Consultant must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.2 Professional Liability:** If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims.
- 5.2.3 Vehicle Liability:** Consultant must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.4 Workers Compensation Insurance:** Consultant must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 SEVERABILITY AND AUTHORITY

6.1 SEVERABILITY

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 AUTHORITY

Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

7.0 REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at www.IRS.gov under their forms section.

The City of Scottsdale by its Mayor and City Clerk has subscribed their names this 1st day of July, 2013.

CITY OF SCOTTSDALE


By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

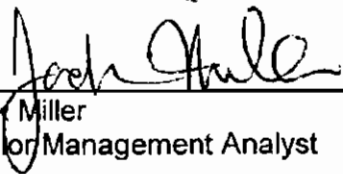
By: _____
Carolyn Jagger, City Clerk

CONSULTANT:

Ana Maribet Sanchez, PLLC
668 N. 44th St., #300
Phoenix, AZ 85008
Phone: 602-672-6887 / Fax: 602-685-1066

By: 
Anna M. Sanchez

CITY CONTRACT ADMINISTRATOR:

By: 
Jack Miller
Senior Management Analyst

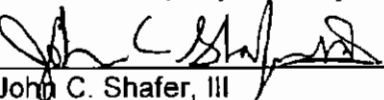
CITY OF SCOTTSDALE REVIEW:


By: _____
James Flanagan
Purchasing Director

By: 
Edward M. Howard
Risk Management Director

APPROVED AS TO FORM:

Bruce Washburn, City Attorney

By: 
John C. Shafer, III
Assistant City Attorney



**CITY OF SCOTTSDALE
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, entered into this 1st day of July, 2013, between the City of Scottsdale, an Arizona municipal corporation, the "City", and Bain & Lauritano, P.C., a Corporation of the State of Arizona the "Consultant".

WITNESSETH

The Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

The Consultant is duly qualified to perform the requested services; and

In consideration of the mutual promises and obligations stated in this Contract, the parties agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant will act under the authority and approval of the Contract Administrator for the City, as named below, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The entire Request for Proposal No. 13RP025 identified as City Court Public Defender Services is incorporated into this Contract by this reference as fully as if written out below. Consultant's proposal submitted in response to Request for Proposal Number 13RP025 and dated April 15, 2013 is incorporated into this Contract by this reference as fully as if written out below.

If any provision incorporated by reference from the Request for Proposal conflicts with any provision of the Consultant's proposal, the provision of the Request for Proposal will control. If any provision of the Consultant's proposal conflicts with any provision of this Contract, this Contract will control.

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task must be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City will provide all necessary information to the Consultant for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 BILLING RECORDS, AUDIT

The time spent for each task must be recorded and submitted to the Contract Administrator. Consultant must maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and makes these materials available for audit by the City in accordance with Section 4.7 of this Contract.

2.2 FEE SCHEDULE

The Contractor shall receive payment of the sum of two hundred and fifty dollars (\$250.00) per case assigned.

The Contractor shall be paid only upon submittal of an invoice by Scottsdale City Court where City of Scottsdale Court staff will verify the case number and proof of the Contractor being appointed to the case.

2.3 PAYMENT APPROVAL

All charges must be approved by the Contract Administrator before payment.

2.3.1 PAYMENT TERMS

The City of Scottsdale's payment terms are payment within thirty (30) days after approval by Contract Administrator. In no event will payment be made prior to receipt of an original invoice containing invoice and proper reference numbers. The City is not liable for delays in payment caused by failure of the vendor or contractor to send invoice to the address specified below:

City of Scottsdale
Accounts Payable
7447 E. Indian School Road, Ste 220
Scottsdale, Arizona 85251-4468

2.4 PRICE ADJUSTMENT

Fee increases may only be requested by the Contractor, thirty (30) days prior to the anniversary date of any such resulting Professional Services Contract.

Failure of the Contractor to request a fee increase thirty (30) days prior to the anniversary date of the Professional Services Contract may result in the denial of any fee increase requested.

Fee increases will become effective only after approval by the City of Scottsdale Presiding Judge and will be effective for only one year from the date of approval.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

The term of this Contract shall be for a one (1) year period from the effective date-the date approved by the City Council.

The City and Contractor may mutually agree to extend this Contract for four (4) additional one (1) year periods, upon the recommendation of the Contract Administrator, concurrence of the Purchasing Director.

3.2 TERMINATION

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

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

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this contract immediately upon giving notice to the Consultant.

If the City cancels this Contract or any part of the Contract services, the City will notify the Consultant in writing, and upon receiving notice, the Consultant must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Consultant must deliver to the City all drawings, special provisions, reports, and other documents, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be at the City's sole responsibility.

The Consultant must appraise the work it has completed and submit its appraisal to the City for evaluation. At that time, the Consultant will be entitled to be paid for Work performed and accepted by the City before the default.

If the Consultant fails to fulfill in a timely and proper manner its obligations, or if the Consultant violates any of the terms of this Contract, the City may withhold any payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section.

3.3 FUNDS APPROPRIATION

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

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the specified services. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract is governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

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

4.5 SUCCESSORS AND ASSIGNS

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

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City will be Jack Miller or designee. The Contract Administrator will oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements. The Consultant must channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

The City may audit all of the Consultant's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this contract must be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees in accordance with the execution of the contract. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Consultant's records and personnel in accordance with the provisions of this section throughout the term of this contract and for a period of 3 years after last or final payment.

4.7 RECORDS AND AUDIT RIGHTS – CONT'D

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

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

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to cancel this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

4.11 CONFLICT OF INTEREST – CONT'D

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

4.12 NOTICES

All notices or demands required to be given in accordance with the terms of this Contract must be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this section.

In the case of Consultant:

Bain & Lauritano, P.C.
Amy Bain
6751 N. Sunset Blvd., #355
Glendale, AZ 85305
623-877-0500

In the case of City:

City of Scottsdale
City Court
Jack Miller, Contract Administrator
3700 North 75th Street
Scottsdale, AZ 85251
480-312-7824

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail. Notice by facsimile or electronic mail is not adequate notice.

4.13 FORCE MAJEURE

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

4.14 TAXES

Consultant is solely responsible for any and all tax obligations which may result out of the Consultants performance of this contract. The City has no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.15 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without first obtaining the written approval for the advertising or publicity by the City Contract Administrator.

4.16 COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract will be considered to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

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

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

The Consultant will pay its Subcontractors within 7 calendar days of receipt of each progress payment from the City. The Consultant will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Consultant will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Consultant. No Contract between the Consultant and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

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

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

4.19 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If any changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment will be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

4.20 CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

4.21 COMPLIANCE WITH FEDERAL AND STATE LAWS

The Consultant understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. In addition, the Consultant understands and acknowledges the applicability of A.R.S. §34-301 and 34-302.

4.22 IMMIGRATION LAW COMPLIANCE

Under the provisions of A.R.S. §41-4401, the Consultant warrants to the City that the Consultant and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Consultant and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

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

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

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

4.23 LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS

A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that verifies that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS / INDIVIDUALS / SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations Limited Partnerships or General Partnerships)*

By submitting your quote, bid, proposal and/or indicating your desire to enter in a contract with the City you are agreeing that if you are selected as the awardee and meet the criteria of a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation to verify of that statement. Types of acceptable documentation copies are an Arizona Drivers License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion before to issuing any contract.

4.23 LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS – CONT'D

If you have previously done business with the City and have already filed the above Affidavit with copies of an acceptable documentation please indicate when you filed the affidavit. If your approved Affidavit is already on file with the City, you have complied with this requirement.

If you fail to provide a completed Affidavit and accompanying copy of your acceptable documentation, or if you do not advise the City of your previous filing within 10 calendar days after receiving the City's request you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/Purchasing> on the Vendor Resources page at the bottom right under Forms.

4.24 CONTRACTS WITH SUDAN AND IRAN

In accordance with A.R.S. §35-391.06 and 35-393.06, the contractor certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

4.25 NO PREFERENTIAL TREATMENT OR DISCRIMINATION

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

4.26 INDEMNIFICATION

To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subcontractor's employees.

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

4.27 OWNERSHIP OF PROJECT DOCUMENTS

All documents, including but not limited to notes, records, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Consultant.

When the work detail covers only the preparation of preliminary reports or documents, there will be no limitations upon the City concerning use of the ideas or recommendations in the reports or documents. The City will release the Consultant from any liability for the preparation and use of preliminary reports or documents.

4.27 OWNERSHIP OF PROJECT DOCUMENTS – CONT'D

Any use of the project documents for purposes other than intended under this Contract will be at the sole risk of the City, and the Consultant will not be liable for any losses or injuries arising out of that use.

4.28 COMPLETENESS AND ACCURACY

The Consultant will be responsible for the completeness and accuracy of work prepared by the Consultant and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Consultant. Additional work or construction added to the project will not be the responsibility of the Consultant unless the need for additional work or construction was created by any error, omission, or negligent act of the Consultant. The City's acceptance of the Consultant's work will not relieve the Consultant of any of its responsibilities. The professional standard to which the Consultant is held will be that of a similar Consultant as practiced in the State of Arizona.

4.29 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES

The total Scope of the Consulting Services to be performed is stated in this Contract. Any services requested outside the scope of work are additional services. The Consultant will not perform these additional services without a written Change Order approved by the City. If the Consultant performs additional services without a Change Order, the Consultant will not receive any additional compensation.

4.30 EQUAL EMPLOYMENT OPPORTUNITY

The Consultant will comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). The Consultant will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

4.31 EVALUATION OF CONSULTANT'S PERFORMANCE

The Consultant will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (linework, lettering, etc.)
- Working relationship with City staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

4.32 THIRD PARTY BENEFICIARY

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the Consultant, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and the Consultant and not for the benefit of any other party.

4.33 CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS

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

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

5.0 INSURANCE

A current standard Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.

5.1 Insurance Representations and Requirements

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

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

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

- 5.1.4 Claims Made:** In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.
- 5.1.5 Policy Deductibles and or Self Insured Retentions:** The policy requirements may provide coverage which contain deductibles or self insured retention amounts. These deductibles or self insured retention must not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant is solely responsible for any deductible or self insured retention amount. City of Scottsdale, at its option, may require Consultant to secure payment of the deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors:** If any work under this Contract is subcontracted in any way, Consultant must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as stated in this Contract protecting City of Scottsdale and Consultant. Consultant is responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance:** Before starting any work or services under this Contract, Consultant must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that this coverage and the provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it is Consultant's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:
1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
 2. Consultant's insurance must be primary insurance as respects performance of subject contract.
 3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Contract.
 4. If the Consultant receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Consultant's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

5.2 Required Coverage

- 5.2.1 Commercial General Liability:** Consultant must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.2 Professional Liability:** If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims.
- 5.2.3 Vehicle Liability:** Consultant must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.4 Workers Compensation Insurance:** Consultant must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 SEVERABILITY AND AUTHORITY

6.1 SEVERABILITY

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 AUTHORITY

Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

7.0 REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at www.IRS.gov under their forms section.

The City of Scottsdale by its Mayor and City Clerk has subscribed their names this 1st day of July, 2013.

CITY OF SCOTTSDALE

By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

By: _____
Carolyn Jagger, City Clerk

CONSULTANT:

Bain & Lauritano
6751 N. Sunset Blvd., #355
Glendale, AZ 85305
Phone: 623-877-0500 / Fax: 623-877-2722

By: _____
Amy Bain

CITY CONTRACT ADMINISTRATOR:

By: _____
Jack Miller
Senior Management Analyst

CITY OF SCOTTSDALE REVIEW:

By: _____
James Flanagan
Purchasing Director

By: _____
Edward M. Howard
Risk Management Director

APPROVED AS TO FORM:

Bruce Washburn, City Attorney
By: _____
John C. Shafer, III
Assistant City Attorney



**CITY OF SCOTTSDALE
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, entered into this 1st day of July, 2013, between the City of Scottsdale, an Arizona municipal corporation, the "City", and Elkie Law Office, P.C., a Corporation of the State of Arizona the "Consultant".

WITNESSETH

The Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

The Consultant is duly qualified to perform the requested services; and

In consideration of the mutual promises and obligations stated in this Contract, the parties agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant will act under the authority and approval of the Contract Administrator for the City, as named below, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The entire Request for Proposal No. 13RP025 identified as City Court Public Defender Services is incorporated into this Contract by this reference as fully as if written out below. Consultant's proposal submitted in response to Request for Proposal Number 13RP025 and dated April 15, 2013 is incorporated into this Contract by this reference as fully as if written out below.

If any provision incorporated by reference from the Request for Proposal conflicts with any provision of the Consultant's proposal, the provision of the Request for Proposal will control. If any provision of the Consultant's proposal conflicts with any provision of this Contract, this Contract will control.

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task must be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City will provide all necessary information to the Consultant for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 BILLING RECORDS, AUDIT

The time spent for each task must be recorded and submitted to the Contract Administrator. Consultant must maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and makes these materials available for audit by the City in accordance with Section 4.7 of this Contract.

2.2 FEE SCHEDULE

The Contractor shall receive payment of the sum of two hundred and fifty dollars (\$250.00) per case assigned.

The Contractor shall be paid only upon submittal of an invoice by Scottsdale City Court where City of Scottsdale Court staff will verify the case number and proof of the Contractor being appointed to the case.

2.3 PAYMENT APPROVAL

All charges must be approved by the Contract Administrator before payment.

2.3.1 PAYMENT TERMS

The City of Scottsdale's payment terms are payment within thirty (30) days after approval by Contract Administrator. In no event will payment be made prior to receipt of an original invoice containing invoice and proper reference numbers. The City is not liable for delays in payment caused by failure of the vendor or contractor to send invoice to the address specified below:

City of Scottsdale
Accounts Payable
7447 E. Indian School Road, Ste 220
Scottsdale, Arizona 85251-4468

2.4 PRICE ADJUSTMENT

Fee increases may only be requested by the Contractor, thirty (30) days prior to the anniversary date of any such resulting Professional Services Contract.

Failure of the Contractor to request a fee increase thirty (30) days prior to the anniversary date of the Professional Services Contract may result in the denial of any fee increase requested.

Fee increases will become effective only after approval by the City of Scottsdale Presiding Judge and will be effective for only one year from the date of approval.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

The term of this Contract shall be for a one (1) year period from the effective date-the date approved by the City Council.

The City and Contractor may mutually agree to extend this Contract for four (4) additional one (1) year periods, upon the recommendation of the Contract Administrator, concurrence of the Purchasing Director.

3.2 TERMINATION

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

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

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this contract immediately upon giving notice to the Consultant.

If the City cancels this Contract or any part of the Contract services, the City will notify the Consultant in writing, and upon receiving notice, the Consultant must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Consultant must deliver to the City all drawings, special provisions, reports, and other documents, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be at the City's sole responsibility.

The Consultant must appraise the work it has completed and submit its appraisal to the City for evaluation. At that time, the Consultant will be entitled to be paid for Work performed and accepted by the City before the default.

If the Consultant fails to fulfill in a timely and proper manner its obligations, or if the Consultant violates any of the terms of this Contract, the City may withhold any payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section.

3.3 FUNDS APPROPRIATION

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

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the specified services. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract is governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

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

4.5 SUCCESSORS AND ASSIGNS

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

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City will be Jack Miller or designee. The Contract Administrator will oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements. The Consultant must channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

The City may audit all of the Consultant's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this contract must be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees in accordance with the execution of the contract. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Consultant's records and personnel in accordance with the provisions of this section throughout the term of this contract and for a period of 3 years after last or final payment.

4.7 RECORDS AND AUDIT RIGHTS – CONT'D

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

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

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to cancel this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

4.11 CONFLICT OF INTEREST – CONT'D

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

4.12 NOTICES

All notices or demands required to be given in accordance with the terms of this Contract must be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this section.

In the case of Consultant:

Elkie Law Office, P.C.
Tait D. Elkie
13034 N. Verde River Drive, Ste. #104
Fountain Hills, AZ 85268
480-626-7070

In the case of City:

City of Scottsdale
City Court
Jack Miller, Contract Administrator
3700 North 75th Street
Scottsdale, AZ 85251
480-312-7824

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail. Notice by facsimile or electronic mail is not adequate notice.

4.13 FORCE MAJEURE

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

4.14 TAXES

Consultant is solely responsible for any and all tax obligations which may result out of the Consultants performance of this contract. The City has no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.15 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without first obtaining the written approval for the advertising or publicity by the City Contract Administrator.

4.16 COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract will be considered to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

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

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

The Consultant will pay its Subcontractors within 7 calendar days of receipt of each progress payment from the City. The Consultant will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Consultant will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Consultant. No Contract between the Consultant and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

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

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

4.19 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If any changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment will be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

4.20 CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

4.21 COMPLIANCE WITH FEDERAL AND STATE LAWS

The Consultant understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. In addition, the Consultant understands and acknowledges the applicability of A.R.S. §34-301 and 34-302.

4.22 IMMIGRATION LAW COMPLIANCE

Under the provisions of A.R.S. §41-4401, the Consultant warrants to the City that the Consultant and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Consultant and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

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

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

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

4.23 LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS

A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that verifies that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS / INDIVIDUALS / SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations Limited Partnerships or General Partnerships)*

By submitting your quote, bid, proposal and/or indicating your desire to enter in a contract with the City you are agreeing that if you are selected as the awardee and meet the criteria of a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation to verify of that statement. Types of acceptable documentation copies are an Arizona Drivers License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion before to issuing any contract.

4.23 *LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS – CONT'D*

If you have previously done business with the City and have already filed the above Affidavit with copies of an acceptable documentation please indicate when you filed the affidavit. If your approved Affidavit is already on file with the City, you have complied with this requirement.

If you fail to provide a completed Affidavit and accompanying copy of your acceptable documentation, or if you do not advise the City of your previous filing within 10 calendar days after receiving the City's request you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/Purchasing> on the Vendor Resources page at the bottom right under Forms.

4.24 *CONTRACTS WITH SUDAN AND IRAN*

In accordance with A.R.S. §35-391.06 and 35-393.06, the contractor certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

4.25 *NO PREFERENTIAL TREATMENT OR DISCRIMINATION*

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

4.26 *INDEMNIFICATION*

To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subcontractor's employees.

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

4.27 *OWNERSHIP OF PROJECT DOCUMENTS*

All documents, including but not limited to notes, records, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Consultant.

When the work detail covers only the preparation of preliminary reports or documents, there will be no limitations upon the City concerning use of the ideas or recommendations in the reports or documents. The City will release the Consultant from any liability for the preparation and use of preliminary reports or documents.

4.27 OWNERSHIP OF PROJECT DOCUMENTS – CONT'D

Any use of the project documents for purposes other than intended under this Contract will be at the sole risk of the City, and the Consultant will not be liable for any losses or injuries arising out of that use.

4.28 COMPLETENESS AND ACCURACY

The Consultant will be responsible for the completeness and accuracy of work prepared by the Consultant and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Consultant. Additional work or construction added to the project will not be the responsibility of the Consultant unless the need for additional work or construction was created by any error, omission, or negligent act of the Consultant. The City's acceptance of the Consultant's work will not relieve the Consultant of any of its responsibilities. The professional standard to which the Consultant is held will be that of a similar Consultant as practiced in the State of Arizona.

4.29 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES

The total Scope of the Consulting Services to be performed is stated in this Contract. Any services requested outside the scope of work are additional services. The Consultant will not perform these additional services without a written Change Order approved by the City. If the Consultant performs additional services without a Change Order, the Consultant will not receive any additional compensation.

4.30 EQUAL EMPLOYMENT OPPORTUNITY

The Consultant will comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). The Consultant will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

4.31 EVALUATION OF CONSULTANT'S PERFORMANCE

The Consultant will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (linework, lettering, etc.)
- Working relationship with City staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

4.32 **THIRD PARTY BENEFICIARY**

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the Consultant, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and the Consultant and not for the benefit of any other party.

4.33 **CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS**

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

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

5.0 **INSURANCE**

A current standard Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.

5.1 **Insurance Representations and Requirements**

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

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

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

- 5.1.4 Claims Made:** In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.
- 5.1.5 Policy Deductibles and or Self Insured Retentions:** The policy requirements may provide coverage which contain deductibles or self insured retention amounts. These deductibles or self insured retention must not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant is solely responsible for any deductible or self insured retention amount. City of Scottsdale, at its option, may require Consultant to secure payment of the deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors:** If any work under this Contract is subcontracted in any way, Consultant must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as stated in this Contract protecting City of Scottsdale and Consultant. Consultant is responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance:** Before starting any work or services under this Contract, Consultant must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that this coverage and the provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it is Consultant's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:
1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
 2. Consultant's insurance must be primary insurance as respects performance of subject contract.
 3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Contract.
 4. If the Consultant receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Consultant's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

5.2 Required Coverage

- 5.2.1 Commercial General Liability:** Consultant must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.2 Professional Liability:** If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims.
- 5.2.3 Vehicle Liability:** Consultant must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.4 Workers Compensation Insurance:** Consultant must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 SEVERABILITY AND AUTHORITY

6.1 SEVERABILITY

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 AUTHORITY

Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

7.0 REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at www.IRS.gov under their forms section.

The City of Scottsdale by its Mayor and City Clerk has subscribed their names this 1st day of July, 2013.

CITY OF SCOTTSDALE

By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

By: _____
Carolyn Jagger, City Clerk

CONSULTANT:

Elkie Law Office, P.C.
13034 N. Verde River Drive, Ste. #104
Fountain Hills, AZ 85268
Phone: 480-626-7070 / Fax: 480-626-2244

By: _____
Tait D. Elkie

CITY CONTRACT ADMINISTRATOR:

By: _____
Jack Miller
Senior Management Analyst

CITY OF SCOTTSDALE REVIEW:

By: _____
James Flanagan
Purchasing Director

By: _____
Edward M. Howard
Risk Management Director

APPROVED AS TO FORM:

Bruce Washburn, City Attorney

By: _____
John C. Shafer, III
Assistant City Attorney



**CITY OF SCOTTSDALE
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, entered into this 1st day of July, 2013, between the City of Scottsdale, an Arizona municipal corporation, the "City", and The Law Office of Alexander Y. Benikov, PLLC, a Corporation of the State of Arizona the "Consultant".

WITNESSETH

The Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

The Consultant is duly qualified to perform the requested services; and

In consideration of the mutual promises and obligations stated in this Contract, the parties agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant will act under the authority and approval of the Contract Administrator for the City, as named below, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The entire Request for Proposal No. 13RP025 identified as City Court Public Defender Services is incorporated into this Contract by this reference as fully as if written out below. Consultant's proposal submitted in response to Request for Proposal Number 13RP025 and dated April 15, 2013 is incorporated into this Contract by this reference as fully as if written out below.

If any provision incorporated by reference from the Request for Proposal conflicts with any provision of the Consultant's proposal, the provision of the Request for Proposal will control. If any provision of the Consultant's proposal conflicts with any provision of this Contract, this Contract will control.

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task must be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City will provide all necessary information to the Consultant for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 BILLING RECORDS, AUDIT

The time spent for each task must be recorded and submitted to the Contract Administrator. Consultant must maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and makes these materials available for audit by the City in accordance with Section 4.7 of this Contract.

2.2 FEE SCHEDULE

The Contractor shall receive payment of the sum of two hundred and fifty dollars (\$250.00) per case assigned.

The Contractor shall be paid only upon submittal of an invoice by Scottsdale City Court where City of Scottsdale Court staff will verify the case number and proof of the Contractor being appointed to the case.

2.3 PAYMENT APPROVAL

All charges must be approved by the Contract Administrator before payment.

2.3.1 PAYMENT TERMS

The City of Scottsdale's payment terms are payment within thirty (30) days after approval by Contract Administrator. In no event will payment be made prior to receipt of an original invoice containing invoice and proper reference numbers. The City is not liable for delays in payment caused by failure of the vendor or contractor to send invoice to the address specified below:

City of Scottsdale
Accounts Payable
7447 E. Indian School Road, Ste 220
Scottsdale, Arizona 85251-4468

2.4 PRICE ADJUSTMENT

Fee increases may only be requested by the Contractor, thirty (30) days prior to the anniversary date of any such resulting Professional Services Contract.

Failure of the Contractor to request a fee increase thirty (30) days prior to the anniversary date of the Professional Services Contract may result in the denial of any fee increase requested.

Fee increases will become effective only after approval by the City of Scottsdale Presiding Judge and will be effective for only one year from the date of approval.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

The term of this Contract shall be for a one (1) year period from the effective date-the date of approval by the City Council.

The City and Contractor may mutually agree to extend this Contract for four (4) additional one (1) year periods, upon the recommendation of the Contract Administrator, concurrence of the Purchasing Director.

3.2 TERMINATION

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

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

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this contract immediately upon giving notice to the Consultant.

If the City cancels this Contract or any part of the Contract services, the City will notify the Consultant in writing, and upon receiving notice, the Consultant must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Consultant must deliver to the City all drawings, special provisions, reports, and other documents, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be at the City's sole responsibility.

The Consultant must appraise the work it has completed and submit its appraisal to the City for evaluation. At that time, the Consultant will be entitled to be paid for Work performed and accepted by the City before the default.

If the Consultant fails to fulfill in a timely and proper manner its obligations, or if the Consultant violates any of the terms of this Contract, the City may withhold any payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section.

3.3 FUNDS APPROPRIATION

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

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the specified services. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract is governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

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

4.5 SUCCESSORS AND ASSIGNS

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

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City will be Jack Miller or designee. The Contract Administrator will oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements. The Consultant must channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

The City may audit all of the Consultant's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this contract must be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees in accordance with the execution of the contract. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Consultant's records and personnel in accordance with the provisions of this section throughout the term of this contract and for a period of 3 years after last or final payment.

4.7 RECORDS AND AUDIT RIGHTS – CONT'D

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

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

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to cancel this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

4.11 CONFLICT OF INTEREST – CONT'D

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

4.12 NOTICES

All notices or demands required to be given in accordance with the terms of this Contract must be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this section.

In the case of Consultant:

The Law Office of Alexander Y. Benikov, PLLC
Alexander Y. Benikov
1095 E. Indian School Rd., Suite #600
Phoenix, AZ 85014
602-253-6592

In the case of City:

City of Scottsdale
City Court
Jack Miller, Contract Administrator
3700 North 75th Street
Scottsdale, AZ 85251
480-312-7824

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail. Notice by facsimile or electronic mail is not adequate notice.

4.13 FORCE MAJEURE

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

4.14 TAXES

Consultant is solely responsible for any and all tax obligations which may result out of the Consultants performance of this contract. The City has no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.15 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without first obtaining the written approval for the advertising or publicity by the City Contract Administrator.

4.16 COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract will be considered to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

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

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

The Consultant will pay its Subcontractors within 7 calendar days of receipt of each progress payment from the City. The Consultant will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Consultant will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Consultant. No Contract between the Consultant and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

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

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

4.19 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If any changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment will be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

4.20 CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

4.21 COMPLIANCE WITH FEDERAL AND STATE LAWS

The Consultant understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. In addition, the Consultant understands and acknowledges the applicability of A.R.S. §34-301 and 34-302.

4.22 IMMIGRATION LAW COMPLIANCE

Under the provisions of A.R.S. §41-4401, the Consultant warrants to the City that the Consultant and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Consultant and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

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

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

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

4.23 LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS

A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that verifies that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS / INDIVIDUALS / SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations Limited Partnerships or General Partnerships)*

By submitting your quote, bid, proposal and/or indicating your desire to enter in a contract with the City you are agreeing that if you are selected as the awardee and meet the criteria of a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation to verify of that statement. Types of acceptable documentation copies are an Arizona Drivers License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion before to issuing any contract.

4.23 *LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS – CONT'D*

If you have previously done business with the City and have already filed the above Affidavit with copies of an acceptable documentation please indicate when you filed the affidavit. If your approved Affidavit is already on file with the City, you have complied with this requirement.

If you fail to provide a completed Affidavit and accompanying copy of your acceptable documentation, or if you do not advise the City of your previous filing within 10 calendar days after receiving the City's request you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/Purchasing> on the Vendor Resources page at the bottom right under Forms.

4.24 *CONTRACTS WITH SUDAN AND IRAN*

In accordance with A.R.S. §35-391.06 and 35-393.06, the contractor certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

4.25 *NO PREFERENTIAL TREATMENT OR DISCRIMINATION*

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

4.26 *INDEMNIFICATION*

To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subcontractor's employees.

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

4.27 *OWNERSHIP OF PROJECT DOCUMENTS*

All documents, including but not limited to notes, records, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Consultant.

When the work detail covers only the preparation of preliminary reports or documents, there will be no limitations upon the City concerning use of the ideas or recommendations in the reports or documents. The City will release the Consultant from any liability for the preparation and use of preliminary reports or documents.

4.27 OWNERSHIP OF PROJECT DOCUMENTS – CONT'D

Any use of the project documents for purposes other than intended under this Contract will be at the sole risk of the City, and the Consultant will not be liable for any losses or injuries arising out of that use.

4.28 COMPLETENESS AND ACCURACY

The Consultant will be responsible for the completeness and accuracy of work prepared by the Consultant and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Consultant. Additional work or construction added to the project will not be the responsibility of the Consultant unless the need for additional work or construction was created by any error, omission, or negligent act of the Consultant. The City's acceptance of the Consultant's work will not relieve the Consultant of any of its responsibilities. The professional standard to which the Consultant is held will be that of a similar Consultant as practiced in the State of Arizona.

4.29 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES

The total Scope of the Consulting Services to be performed is stated in this Contract. Any services requested outside the scope of work are additional services. The Consultant will not perform these additional services without a written Change Order approved by the City. If the Consultant performs additional services without a Change Order, the Consultant will not receive any additional compensation.

4.30 EQUAL EMPLOYMENT OPPORTUNITY

The Consultant will comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). The Consultant will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

4.31 EVALUATION OF CONSULTANT'S PERFORMANCE

The Consultant will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (linework, lettering, etc.)
- Working relationship with City staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

4.32 THIRD PARTY BENEFICIARY

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the Consultant, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and the Consultant and not for the benefit of any other party.

4.33 CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS

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

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

5.0 INSURANCE

A current standard Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.

5.1 Insurance Representations and Requirements

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

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

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

- 5.1.4 Claims Made:** In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.
- 5.1.5 Policy Deductibles and or Self Insured Retentions:** The policy requirements may provide coverage which contain deductibles or self insured retention amounts. These deductibles or self insured retention must not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant is solely responsible for any deductible or self insured retention amount. City of Scottsdale, at its option, may require Consultant to secure payment of the deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors:** If any work under this Contract is subcontracted in any way, Consultant must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as stated in this Contract protecting City of Scottsdale and Consultant. Consultant is responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance:** Before starting any work or services under this Contract, Consultant must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that this coverage and the provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it is Consultant's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:
1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
 2. Consultant's insurance must be primary insurance as respects performance of subject contract.
 3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Contract.
 4. If the Consultant receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Consultant's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

5.2 Required Coverage

- 5.2.1 Commercial General Liability:** Consultant must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.2 Professional Liability:** If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims.
- 5.2.3 Vehicle Liability:** Consultant must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.4 Workers Compensation Insurance:** Consultant must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 SEVERABILITY AND AUTHORITY

6.1 SEVERABILITY

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 AUTHORITY

Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

7.0 REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at www.IRS.gov under their forms section.

The City of Scottsdale by its Mayor and City Clerk has subscribed their names this 1st day of July, 2013.

CITY OF SCOTTSDALE

By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

By: _____
Carolyn Jagger, City Clerk

CONSULTANT:

The Law Office of Alexander Y. Benikov, PLLC
1095 E. Indian School Rd., Suite #600
Phoenix, AZ 85014
Phone: 602-253-6592 / Fax: 602-253-6592

By: _____
Alexander Y. Benikov

CITY OF SCOTTSDALE REVIEW:

By: _____
James Flanagan
Purchasing Director

By: _____
Edward M. Howard
Risk Management Director

CITY CONTRACT ADMINISTRATOR:

By: _____
Jack Miller
Senior Management Analyst

APPROVED AS TO FORM:
Bruce Washburn, City Attorney

By: _____
John C. Shafer, III
Assistant City Attorney



**CITY OF SCOTTSDALE
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, entered into this 1st day of July, 2013, between the City of Scottsdale, an Arizona municipal corporation, the "City", and Law Office of V. Tyler Harrison, PLLC, a Corporation of the State of Arizona the "Consultant".

WITNESSETH

The Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

The Consultant is duly qualified to perform the requested services; and

In consideration of the mutual promises and obligations stated in this Contract, the parties agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant will act under the authority and approval of the Contract Administrator for the City, as named below, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The entire Request for Proposal No. 13RP025 identified as City Court Public Defender Services is incorporated into this Contract by this reference as fully as if written out below. Consultant's proposal submitted in response to Request for Proposal Number 13RP025 and dated April 15, 2013 is incorporated into this Contract by this reference as fully as if written out below.

If any provision incorporated by reference from the Request for Proposal conflicts with any provision of the Consultant's proposal, the provision of the Request for Proposal will control. If any provision of the Consultant's proposal conflicts with any provision of this Contract, this Contract will control.

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task must be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City will provide all necessary information to the Consultant for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 BILLING RECORDS, AUDIT

The time spent for each task must be recorded and submitted to the Contract Administrator. Consultant must maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and makes these materials available for audit by the City in accordance with Section 4.7 of this Contract.

2.2 FEE SCHEDULE

The Contractor shall receive payment of the sum of two hundred and fifty dollars (\$250.00) per case assigned.

The Contractor shall be paid only upon submittal of an invoice by Scottsdale City Court where City of Scottsdale Court staff will verify the case number and proof of the Contractor being appointed to the case.

2.3 PAYMENT APPROVAL

All charges must be approved by the Contract Administrator before payment.

2.3.1 PAYMENT TERMS

The City of Scottsdale's payment terms are payment within thirty (30) days after approval by Contract Administrator. In no event will payment be made prior to receipt of an original invoice containing invoice and proper reference numbers. The City is not liable for delays in payment caused by failure of the vendor or contractor to send invoice to the address specified below:

City of Scottsdale
Accounts Payable
7447 E. Indian School Road, Ste 220
Scottsdale, Arizona 85251-4468

2.4 PRICE ADJUSTMENT

Fee increases may only be requested by the Contractor, thirty (30) days prior to the anniversary date of any such resulting Professional Services Contract.

Failure of the Contractor to request a fee increase thirty (30) days prior to the anniversary date of the Professional Services Contract may result in the denial of any fee increase requested.

Fee increases will become effective only after approval by the City of Scottsdale Presiding Judge and will be effective for only one year from the date of approval.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

The term of this Contract shall be for a one (1) year period from the effective date-the date of approval by the City Council.

The City and Contractor may mutually agree to extend this Contract for four (4) additional one (1) year periods, upon the recommendation of the Contract Administrator, concurrence of the Purchasing Director.

3.2 TERMINATION

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

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

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this contract immediately upon giving notice to the Consultant.

If the City cancels this Contract or any part of the Contract services, the City will notify the Consultant in writing, and upon receiving notice, the Consultant must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Consultant must deliver to the City all drawings, special provisions, reports, and other documents, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be at the City's sole responsibility.

The Consultant must appraise the work it has completed and submit its appraisal to the City for evaluation. At that time, the Consultant will be entitled to be paid for Work performed and accepted by the City before the default.

If the Consultant fails to fulfill in a timely and proper manner its obligations, or if the Consultant violates any of the terms of this Contract, the City may withhold any payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section.

3.3 FUNDS APPROPRIATION

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

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the specified services. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract is governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

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

4.5 SUCCESSORS AND ASSIGNS

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

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City will be Jack Miller or designee. The Contract Administrator will oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements. The Consultant must channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

The City may audit all of the Consultant's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this contract must be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees in accordance with the execution of the contract. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Consultant's records and personnel in accordance with the provisions of this section throughout the term of this contract and for a period of 3 years after last or final payment.

4.7 RECORDS AND AUDIT RIGHTS – CONT'D

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

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

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to cancel this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

4.11 CONFLICT OF INTEREST – CONT'D

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

4.12 NOTICES

All notices or demands required to be given in accordance with the terms of this Contract must be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this section.

In the case of Consultant:

Law Office of V. Tyler Harrison, PLLC.
Vestil Tyler Harrison
7970 E. Camelback Rd., #707
Scottsdale, AZ 85251
602-561-3102

In the case of City:

City of Scottsdale
City Court
Jack Miller, Contract Administrator
3700 North 75th Street
Scottsdale, AZ 85251
480-312-7824

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail. Notice by facsimile or electronic mail is not adequate notice.

4.13 FORCE MAJEURE

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

4.14 TAXES

Consultant is solely responsible for any and all tax obligations which may result out of the Consultants performance of this contract. The City has no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.15 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without first obtaining the written approval for the advertising or publicity by the City Contract Administrator.

4.16 COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract will be considered to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

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

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

The Consultant will pay its Subcontractors within 7 calendar days of receipt of each progress payment from the City. The Consultant will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Consultant will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Consultant. No Contract between the Consultant and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

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

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

4.19 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If any changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment will be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

4.20 CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

4.21 COMPLIANCE WITH FEDERAL AND STATE LAWS

The Consultant understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. In addition, the Consultant understands and acknowledges the applicability of A.R.S. §34-301 and 34-302.

4.22 IMMIGRATION LAW COMPLIANCE

Under the provisions of A.R.S. §41-4401, the Consultant warrants to the City that the Consultant and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Consultant and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

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

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

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

4.23 LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS

A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that verifies that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS / INDIVIDUALS / SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations Limited Partnerships or General Partnerships)*

By submitting your quote, bid, proposal and/or indicating your desire to enter in a contract with the City you are agreeing that if you are selected as the awardee and meet the criteria of a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation to verify of that statement. Types of acceptable documentation copies are an Arizona Drivers License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion before to issuing any contract.

4.23 LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS – CONT'D

If you have previously done business with the City and have already filed the above Affidavit with copies of an acceptable documentation please indicate when you filed the affidavit. If your approved Affidavit is already on file with the City, you have complied with this requirement.

If you fail to provide a completed Affidavit and accompanying copy of your acceptable documentation, or if you do not advise the City of your previous filing within 10 calendar days after receiving the City's request you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/Purchasing> on the Vendor Resources page at the bottom right under Forms.

4.24 CONTRACTS WITH SUDAN AND IRAN

In accordance with A.R.S. §35-391.06 and 35-393.06, the contractor certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

4.25 NO PREFERENTIAL TREATMENT OR DISCRIMINATION

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

4.26 INDEMNIFICATION

To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subcontractor's employees.

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

4.27 OWNERSHIP OF PROJECT DOCUMENTS

All documents, including but not limited to notes, records, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Consultant.

When the work detail covers only the preparation of preliminary reports or documents, there will be no limitations upon the City concerning use of the ideas or recommendations in the reports or documents. The City will release the Consultant from any liability for the preparation and use of preliminary reports or documents.

4.27 OWNERSHIP OF PROJECT DOCUMENTS – CONT'D

Any use of the project documents for purposes other than intended under this Contract will be at the sole risk of the City, and the Consultant will not be liable for any losses or injuries arising out of that use.

4.28 COMPLETENESS AND ACCURACY

The Consultant will be responsible for the completeness and accuracy of work prepared by the Consultant and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Consultant. Additional work or construction added to the project will not be the responsibility of the Consultant unless the need for additional work or construction was created by any error, omission, or negligent act of the Consultant. The City's acceptance of the Consultant's work will not relieve the Consultant of any of its responsibilities. The professional standard to which the Consultant is held will be that of a similar Consultant as practiced in the State of Arizona.

4.29 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES

The total Scope of the Consulting Services to be performed is stated in this Contract. Any services requested outside the scope of work are additional services. The Consultant will not perform these additional services without a written Change Order approved by the City. If the Consultant performs additional services without a Change Order, the Consultant will not receive any additional compensation.

4.30 EQUAL EMPLOYMENT OPPORTUNITY

The Consultant will comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). The Consultant will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

4.31 EVALUATION OF CONSULTANT'S PERFORMANCE

The Consultant will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (linework, lettering, etc.)
- Working relationship with City staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

4.32 THIRD PARTY BENEFICIARY

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the Consultant, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and the Consultant and not for the benefit of any other party.

4.33 CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS

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

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

5.0 INSURANCE

A current standard Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.

5.1 Insurance Representations and Requirements

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

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

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

- 5.1.4 Claims Made:** In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.
- 5.1.5 Policy Deductibles and or Self Insured Retentions:** The policy requirements may provide coverage which contain deductibles or self insured retention amounts. These deductibles or self insured retention must not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant is solely responsible for any deductible or self insured retention amount. City of Scottsdale, at its option, may require Consultant to secure payment of the deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors:** If any work under this Contract is subcontracted in any way, Consultant must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as stated in this Contract protecting City of Scottsdale and Consultant. Consultant is responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance:** Before starting any work or services under this Contract, Consultant must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that this coverage and the provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it is Consultant's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:
1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
 2. Consultant's insurance must be primary insurance as respects performance of subject contract.
 3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Contract.
 4. If the Consultant receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Consultant's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

5.2 Required Coverage

- 5.2.1 Commercial General Liability:** Consultant must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.2 Professional Liability:** If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims.
- 5.2.3 Vehicle Liability:** Consultant must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.4 Workers Compensation Insurance:** Consultant must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 **SEVERABILITY AND AUTHORITY**

6.1 **SEVERABILITY**

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 **AUTHORITY**

Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

7.0 **REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM**

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at www.IRS.gov under their forms section.

The City of Scottsdale by its Mayor and City Clerk has subscribed their names this 1st day of July, 2013.

CITY OF SCOTTSDALE

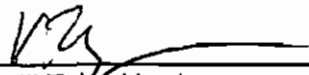
By: _____
W. J. "Jim" Lane, Mayor

ATTEST:


By: _____
Carolyn Jagger, City Clerk

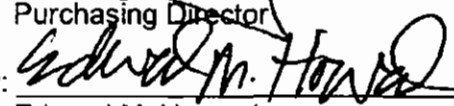
CONSULTANT:

Law Office of V. Tyler Harrison, PLLC
7970 E. Camelback Rd., #707
Scottsdale, AZ 85251
Phone: 602-561-3102 / Fax: 480-993-3980

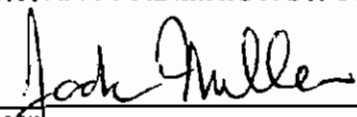
By:  _____
Vestil Tyler Harrison

CITY OF SCOTTSDALE REVIEW:


By: _____
James Flanagan
Purchasing Director

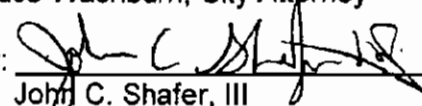
By:  _____
Edward M. Howard
Risk Management Director

CITY CONTRACT ADMINISTRATOR:

By:  _____
Jack Miller
Senior Management Analyst

APPROVED AS TO FORM:

Bruce Washburn, City Attorney

By:  _____
John C. Shafer, III
Assistant City Attorney



**CITY OF SCOTTSDALE
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, entered into this 1st day of July, 2013, between the City of Scottsdale, an Arizona municipal corporation, the "City", and Law Office of Henry J. Clark, Jr. the "Consultant".

WITNESSETH

The Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

The Consultant is duly qualified to perform the requested services; and

In consideration of the mutual promises and obligations stated in this Contract, the parties agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant will act under the authority and approval of the Contract Administrator for the City, as named below, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The entire Request for Proposal No. 13RP025 identified as City Court Public Defender Services is incorporated into this Contract by this reference as fully as if written out below. Consultant's proposal submitted in response to Request for Proposal Number 13RP025 and dated April 15, 2013 is incorporated into this Contract by this reference as fully as if written out below.

If any provision incorporated by reference from the Request for Proposal conflicts with any provision of the Consultant's proposal, the provision of the Request for Proposal will control. If any provision of the Consultant's proposal conflicts with any provision of this Contract, this Contract will control.

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task must be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City will provide all necessary information to the Consultant for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 BILLING RECORDS, AUDIT

The time spent for each task must be recorded and submitted to the Contract Administrator. Consultant must maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and makes these materials available for audit by the City in accordance with Section 4.7 of this Contract.

2.2 FEE SCHEDULE

The Contractor shall receive payment of the sum of two hundred and fifty dollars (\$250.00) per case assigned.

The Contractor shall be paid only upon submittal of an invoice by Scottsdale City Court where City of Scottsdale Court staff will verify the case number and proof of the Contractor being appointed to the case.

2.3 PAYMENT APPROVAL

All charges must be approved by the Contract Administrator before payment.

2.3.1 PAYMENT TERMS

The City of Scottsdale's payment terms are payment within thirty (30) days after approval by Contract Administrator. In no event will payment be made prior to receipt of an original invoice containing invoice and proper reference numbers. The City is not liable for delays in payment caused by failure of the vendor or contractor to send invoice to the address specified below:

City of Scottsdale
Accounts Payable
7447 E. Indian School Road, Ste 220
Scottsdale, Arizona 85251-4468

2.4 PRICE ADJUSTMENT

Fee increases may only be requested by the Contractor, thirty (30) days prior to the anniversary date of any such resulting Professional Services Contract.

Failure of the Contractor to request a fee increase thirty (30) days prior to the anniversary date of the Professional Services Contract may result in the denial of any fee increase requested.

Fee increases will become effective only after approval by the City of Scottsdale Presiding Judge and will be effective for only one year from the date of approval.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

The term of this Contract shall be for a one (1) year period from the effective date-the date of approval by the City Council.

The City and Contractor may mutually agree to extend this Contract for four (4) additional one (1) year periods, upon the recommendation of the Contract Administrator, concurrence of the Purchasing Director.

3.2 TERMINATION

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

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

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this contract immediately upon giving notice to the Consultant.

If the City cancels this Contract or any part of the Contract services, the City will notify the Consultant in writing, and upon receiving notice, the Consultant must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Consultant must deliver to the City all drawings, special provisions, reports, and other documents, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be at the City's sole responsibility.

The Consultant must appraise the work it has completed and submit its appraisal to the City for evaluation. At that time, the Consultant will be entitled to be paid for Work performed and accepted by the City before the default.

If the Consultant fails to fulfill in a timely and proper manner its obligations, or if the Consultant violates any of the terms of this Contract, the City may withhold any payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section.

3.3 FUNDS APPROPRIATION

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

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the specified services. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract is governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

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

4.5 SUCCESSORS AND ASSIGNS

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

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City will be Jack Miller or designee. The Contract Administrator will oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements. The Consultant must channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

The City may audit all of the Consultant's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this contract must be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees in accordance with the execution of the contract. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Consultant's records and personnel in accordance with the provisions of this section throughout the term of this contract and for a period of 3 years after last or final payment.

4.7 RECORDS AND AUDIT RIGHTS – CONT'D

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

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

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to cancel this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

4.11 CONFLICT OF INTEREST – CONT'D

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

4.12 NOTICES

All notices or demands required to be given in accordance with the terms of this Contract must be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this section.

In the case of Consultant:

Law Office of Henry J. Clark, Jr.
Henry J. Clark, Jr.
2601 N. 16th St.
Phoenix, AZ 85006
602-258-1977

In the case of City:

City of Scottsdale
City Court
Jack Miller, Contract Administrator
3700 North 75th Street
Scottsdale, AZ 85251
480-312-7824

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail. Notice by facsimile or electronic mail is not adequate notice.

4.13 FORCE MAJEURE

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

4.14 TAXES

Consultant is solely responsible for any and all tax obligations which may result out of the Consultants performance of this contract. The City has no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.15 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without first obtaining the written approval for the advertising or publicity by the City Contract Administrator.

4.16 COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract will be considered to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

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

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

The Consultant will pay its Subcontractors within 7 calendar days of receipt of each progress payment from the City. The Consultant will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Consultant will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Consultant. No Contract between the Consultant and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

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

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

4.19 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If any changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment will be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

4.20 CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

4.21 COMPLIANCE WITH FEDERAL AND STATE LAWS

The Consultant understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. In addition, the Consultant understands and acknowledges the applicability of A.R.S. §34-301 and 34-302.

4.22 IMMIGRATION LAW COMPLIANCE

Under the provisions of A.R.S. §41-4401, the Consultant warrants to the City that the Consultant and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Consultant and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

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

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

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

4.23 LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS

A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that verifies that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS / INDIVIDUALS / SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations Limited Partnerships or General Partnerships)*

By submitting your quote, bid, proposal and/or indicating your desire to enter in a contract with the City you are agreeing that if you are selected as the awardee and meet the criteria of a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation to verify of that statement. Types of acceptable documentation copies are an Arizona Drivers License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion before to issuing any contract.

4.23 *LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS – CONT'D*

If you have previously done business with the City and have already filed the above Affidavit with copies of an acceptable documentation please indicate when you filed the affidavit. If your approved Affidavit is already on file with the City, you have complied with this requirement.

If you fail to provide a completed Affidavit and accompanying copy of your acceptable documentation, or if you do not advise the City of your previous filing within 10 calendar days after receiving the City's request you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/Purchasing> on the Vendor Resources page at the bottom right under Forms.

4.24 *CONTRACTS WITH SUDAN AND IRAN*

In accordance with A.R.S. §35-391.06 and 35-393.06, the contractor certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

4.25 *NO PREFERENTIAL TREATMENT OR DISCRIMINATION*

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

4.26 *INDEMNIFICATION*

To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subcontractor's employees.

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

4.27 *OWNERSHIP OF PROJECT DOCUMENTS*

All documents, including but not limited to notes, records, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Consultant.

When the work detail covers only the preparation of preliminary reports or documents, there will be no limitations upon the City concerning use of the ideas or recommendations in the reports or documents. The City will release the Consultant from any liability for the preparation and use of preliminary reports or documents.

4.27 OWNERSHIP OF PROJECT DOCUMENTS – CONT'D

Any use of the project documents for purposes other than intended under this Contract will be at the sole risk of the City, and the Consultant will not be liable for any losses or injuries arising out of that use.

4.28 COMPLETENESS AND ACCURACY

The Consultant will be responsible for the completeness and accuracy of work prepared by the Consultant and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Consultant. Additional work or construction added to the project will not be the responsibility of the Consultant unless the need for additional work or construction was created by any error, omission, or negligent act of the Consultant. The City's acceptance of the Consultant's work will not relieve the Consultant of any of its responsibilities. The professional standard to which the Consultant is held will be that of a similar Consultant as practiced in the State of Arizona.

4.29 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES

The total Scope of the Consulting Services to be performed is stated in this Contract. Any services requested outside the scope of work are additional services. The Consultant will not perform these additional services without a written Change Order approved by the City. If the Consultant performs additional services without a Change Order, the Consultant will not receive any additional compensation.

4.30 EQUAL EMPLOYMENT OPPORTUNITY

The Consultant will comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). The Consultant will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

4.31 EVALUATION OF CONSULTANT'S PERFORMANCE

The Consultant will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (linework, lettering, etc.)
- Working relationship with City staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

4.32 THIRD PARTY BENEFICIARY

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the Consultant, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and the Consultant and not for the benefit of any other party.

4.33 CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS

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

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

5.0 INSURANCE

A current standard Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.

5.1 Insurance Representations and Requirements

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

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

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

- 5.1.4 Claims Made:** In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.
- 5.1.5 Policy Deductibles and or Self Insured Retentions:** The policy requirements may provide coverage which contain deductibles or self insured retention amounts. These deductibles or self insured retention must not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant is solely responsible for any deductible or self insured retention amount. City of Scottsdale, at its option, may require Consultant to secure payment of the deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors:** If any work under this Contract is subcontracted in any way, Consultant must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as stated in this Contract protecting City of Scottsdale and Consultant. Consultant is responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance:** Before starting any work or services under this Contract, Consultant must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that this coverage and the provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it is Consultant's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:
1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
 2. Consultant's insurance must be primary insurance as respects performance of subject contract.
 3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Contract.
 4. If the Consultant receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Consultant's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

5.2 Required Coverage

- 5.2.1 Commercial General Liability:** Consultant must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.2 Professional Liability:** If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims.
- 5.2.3 Vehicle Liability:** Consultant must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.4 Workers Compensation Insurance:** Consultant must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 SEVERABILITY AND AUTHORITY

6.1 SEVERABILITY

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 AUTHORITY

Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

7.0 REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at www.IRS.gov under their forms section.

The City of Scottsdale by its Mayor and City Clerk has subscribed their names this 1st day of July, 2013.

CITY OF SCOTTSDALE

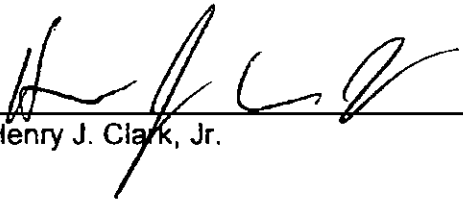
By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

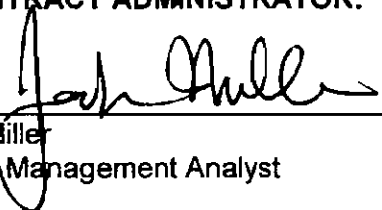
By: _____
Carolyn Jagger, City Clerk

CONSULTANT:

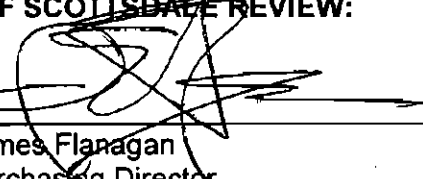
Law Office of Henry J. Clark, Jr.
Henry J. Clark, Jr.
2601 N. 16th St.
Phoenix, AZ 85006
Phone: 602-258-1977 / Fax 602-992-7646

By:  _____
Henry J. Clark, Jr.

CITY CONTRACT ADMINISTRATOR:

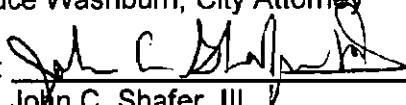
By:  _____
Jack Miller
Senior Management Analyst

CITY OF SCOTTSDALE REVIEW:

By:  _____
James Flanagan
Purchasing Director

By:  _____
Edward M. Howard
Risk Management Director

APPROVED AS TO FORM:

Bruce Washburn, City Attorney
By:  _____
John C. Shafer, III
Assistant City Attorney



**CITY OF SCOTTSDALE
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, entered into this 1st day of July, 2013, between the City of Scottsdale, an Arizona municipal corporation, the "City", and The Law Office of Chad D. Niven the "Consultant".

WITNESSETH

The Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

The Consultant is duly qualified to perform the requested services; and

In consideration of the mutual promises and obligations stated in this Contract, the parties agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant will act under the authority and approval of the Contract Administrator for the City, as named below, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The entire Request for Proposal No. 13RP025 identified as City Court Public Defender Services is incorporated into this Contract by this reference as fully as if written out below. Consultant's proposal submitted in response to Request for Proposal Number 13RP025 and dated April 15, 2013 is incorporated into this Contract by this reference as fully as if written out below.

If any provision incorporated by reference from the Request for Proposal conflicts with any provision of the Consultant's proposal, the provision of the Request for Proposal will control. If any provision of the Consultant's proposal conflicts with any provision of this Contract, this Contract will control.

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task must be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City will provide all necessary information to the Consultant for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 BILLING RECORDS, AUDIT

The time spent for each task must be recorded and submitted to the Contract Administrator. Consultant must maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and makes these materials available for audit by the City in accordance with Section 4.7 of this Contract.

2.2 FEE SCHEDULE

The Contractor shall receive payment of the sum of two hundred and fifty dollars (\$250.00) per case assigned.

The Contractor shall be paid only upon submittal of an invoice by Scottsdale City Court where City of Scottsdale Court staff will verify the case number and proof of the Contractor being appointed to the case.

2.3 PAYMENT APPROVAL

All charges must be approved by the Contract Administrator before payment.

2.3.1 PAYMENT TERMS

The City of Scottsdale's payment terms are payment within thirty (30) days after approval by Contract Administrator. In no event will payment be made prior to receipt of an original invoice containing invoice and proper reference numbers. The City is not liable for delays in payment caused by failure of the vendor or contractor to send invoice to the address specified below:

City of Scottsdale
Accounts Payable
7447 E. Indian School Road, Ste 220
Scottsdale, Arizona 85251-4468

2.4 PRICE ADJUSTMENT

Fee increases may only be requested by the Contractor, thirty (30) days prior to the anniversary date of any such resulting Professional Services Contract.

Failure of the Contractor to request a fee increase thirty (30) days prior to the anniversary date of the Professional Services Contract may result in the denial of any fee increase requested.

Fee increases will become effective only after approval by the City of Scottsdale Presiding Judge and will be effective for only one year from the date of approval.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

The term of this Contract shall be for a one (1) year period from the effective date-the date of approval by the City Council.

The City and Contractor may mutually agree to extend this Contract for four (4) additional one (1) year periods, upon the recommendation of the Contract Administrator, concurrence of the Purchasing Director.

3.2 TERMINATION

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

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

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this contract immediately upon giving notice to the Consultant.

If the City cancels this Contract or any part of the Contract services, the City will notify the Consultant in writing, and upon receiving notice, the Consultant must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Consultant must deliver to the City all drawings, special provisions, reports, and other documents, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be at the City's sole responsibility.

The Consultant must appraise the work it has completed and submit its appraisal to the City for evaluation. At that time, the Consultant will be entitled to be paid for Work performed and accepted by the City before the default.

If the Consultant fails to fulfill in a timely and proper manner its obligations, or if the Consultant violates any of the terms of this Contract, the City may withhold any payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section.

3.3 FUNDS APPROPRIATION

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

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the specified services. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract is governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

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

4.5 SUCCESSORS AND ASSIGNS

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

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City will be Jack Miller or designee. The Contract Administrator will oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements. The Consultant must channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

The City may audit all of the Consultant's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this contract must be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees in accordance with the execution of the contract. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Consultant's records and personnel in accordance with the provisions of this section throughout the term of this contract and for a period of 3 years after last or final payment.

4.7 RECORDS AND AUDIT RIGHTS – CONT'D

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

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

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to cancel this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

4.11 CONFLICT OF INTEREST – CONT'D

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

4.12 NOTICES

All notices or demands required to be given in accordance with the terms of this Contract must be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this section.

In the case of Consultant:

The Law Office of Chad D. Niven
Chad D. Niven
9375 E. Shea Blvd, Suite #100
Scottsdale, AZ 85260
480-368-2080

In the case of City:

City of Scottsdale
City Court
Jack Miller, Contract Administrator
3700 North 75th Street
Scottsdale, AZ 85251
480-312-7824

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail. Notice by facsimile or electronic mail is not adequate notice.

4.13 FORCE MAJEURE

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

4.14 TAXES

Consultant is solely responsible for any and all tax obligations which may result out of the Consultants performance of this contract. The City has no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.15 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without first obtaining the written approval for the advertising or publicity by the City Contract Administrator.

4.16 COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract will be considered to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

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

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

The Consultant will pay its Subcontractors within 7 calendar days of receipt of each progress payment from the City. The Consultant will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Consultant will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Consultant. No Contract between the Consultant and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

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

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

4.19 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If any changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment will be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

4.20 CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

4.21 COMPLIANCE WITH FEDERAL AND STATE LAWS

The Consultant understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. In addition, the Consultant understands and acknowledges the applicability of A.R.S. §34-301 and 34-302.

4.22 IMMIGRATION LAW COMPLIANCE

Under the provisions of A.R.S. §41-4401, the Consultant warrants to the City that the Consultant and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Consultant and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

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

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

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

4.23 LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS

A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that verifies that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS / INDIVIDUALS / SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations Limited Partnerships or General Partnerships)*

By submitting your quote, bid, proposal and/or indicating your desire to enter in a contract with the City you are agreeing that if you are selected as the awardee and meet the criteria of a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation to verify of that statement. Types of acceptable documentation copies are an Arizona Drivers License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion before to issuing any contract.

4.23 LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS – CONT'D

If you have previously done business with the City and have already filed the above Affidavit with copies of an acceptable documentation please indicate when you filed the affidavit. If your approved Affidavit is already on file with the City, you have complied with this requirement.

If you fail to provide a completed Affidavit and accompanying copy of your acceptable documentation, or if you do not advise the City of your previous filing within 10 calendar days after receiving the City's request you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/Purchasing> on the Vendor Resources page at the bottom right under Forms.

4.24 CONTRACTS WITH SUDAN AND IRAN

In accordance with A.R.S. §35-391.06 and 35-393.06, the contractor certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

4.25 NO PREFERENTIAL TREATMENT OR DISCRIMINATION

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

4.26 INDEMNIFICATION

To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subcontractor's employees.

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

4.27 OWNERSHIP OF PROJECT DOCUMENTS

All documents, including but not limited to notes, records, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Consultant.

When the work detail covers only the preparation of preliminary reports or documents, there will be no limitations upon the City concerning use of the ideas or recommendations in the reports or documents. The City will release the Consultant from any liability for the preparation and use of preliminary reports or documents.

4.27 OWNERSHIP OF PROJECT DOCUMENTS – CONT'D

Any use of the project documents for purposes other than intended under this Contract will be at the sole risk of the City, and the Consultant will not be liable for any losses or injuries arising out of that use.

4.28 COMPLETENESS AND ACCURACY

The Consultant will be responsible for the completeness and accuracy of work prepared by the Consultant and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Consultant. Additional work or construction added to the project will not be the responsibility of the Consultant unless the need for additional work or construction was created by any error, omission, or negligent act of the Consultant. The City's acceptance of the Consultant's work will not relieve the Consultant of any of its responsibilities. The professional standard to which the Consultant is held will be that of a similar Consultant as practiced in the State of Arizona.

4.29 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES

The total Scope of the Consulting Services to be performed is stated in this Contract. Any services requested outside the scope of work are additional services. The Consultant will not perform these additional services without a written Change Order approved by the City. If the Consultant performs additional services without a Change Order, the Consultant will not receive any additional compensation.

4.30 EQUAL EMPLOYMENT OPPORTUNITY

The Consultant will comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). The Consultant will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

4.31 EVALUATION OF CONSULTANT'S PERFORMANCE

The Consultant will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (linework, lettering, etc.)
- Working relationship with City staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

4.32 THIRD PARTY BENEFICIARY

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the Consultant, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and the Consultant and not for the benefit of any other party.

4.33 CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS

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

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

5.0 INSURANCE

A current standard Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.

5.1 Insurance Representations and Requirements

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

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

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

- 5.1.4 Claims Made:** In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.
- 5.1.5 Policy Deductibles and or Self Insured Retentions:** The policy requirements may provide coverage which contain deductibles or self insured retention amounts. These deductibles or self insured retention must not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant is solely responsible for any deductible or self insured retention amount. City of Scottsdale, at its option, may require Consultant to secure payment of the deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors:** If any work under this Contract is subcontracted in any way, Consultant must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as stated in this Contract protecting City of Scottsdale and Consultant. Consultant is responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance:** Before starting any work or services under this Contract, Consultant must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that this coverage and the provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it is Consultant's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:
1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
 2. Consultant's insurance must be primary insurance as respects performance of subject contract.
 3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Contract.
 4. If the Consultant receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Consultant's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

5.2 **Required Coverage**

- 5.2.1 Commercial General Liability:** Consultant must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.2 Professional Liability:** If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims.
- 5.2.3 Vehicle Liability:** Consultant must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.
- 5.2.4 Workers Compensation Insurance:** Consultant must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 **SEVERABILITY AND AUTHORITY**

6.1 **SEVERABILITY**

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 **AUTHORITY**

Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

7.0 **REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM**

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at www.IRS.gov under their forms section.

The City of Scottsdale by its Mayor and City Clerk has subscribed their names this 1st day of July, 2013.

CITY OF SCOTTSDALE

By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

By: _____
Carolyn Jagger, City Clerk

CONSULTANT:

The Law Office of Chad D. Niven
Chad D. Niven
9375 E. Shea Blvd, Suite #100
Scottsdale, AZ 85260
Phone: 480-368-2080 / Fax: 480-718-7649

By: _____
Chad D. Niven

CITY OF SCOTTSDALE REVIEW:

By: _____
James Flanagan
Purchasing Director

CITY CONTRACT ADMINISTRATOR:

By: _____
Jack Miller
Senior Management Analyst

By: _____
Edward M. Howard
Risk Management Director

APPROVED AS TO FORM:

Bruce Washburn, City Attorney
By: _____
John C. Shafer, III
Assistant City Attorney

REQUEST FOR PROPOSAL



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

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CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

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INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

The City of Scottsdale invites sealed submittals for the provision of public defender services for the City Court. The City intends to award multiple contracts.

SOLICITATION CRITICAL DATES

BID/PROPOSAL SUBMITTAL DUE: 2:00 P.M., LOCAL TIME, MAY 16, 2013

QUESTIONS DUE: 10:00 A.M., LOCAL TIME, MAY 1, 2013

1. SUBMITTAL RECEIPT AND OPENING

SEALED SOLICITATION SUBMITTALS WILL BE RECEIVED until **2:00 P.M., LOCAL TIME, MAY 16, 2013**, at the Purchasing Department Front Desk located on the second floor of the Scottsdale Corporation Yard Building at 9191 E. San Salvador Dr., Scottsdale, AZ 85258. **All submittals must be date and time stamped at the Purchasing Department front desk on or before the submittal receipt time and date. LATE SUBMITTALS WILL NOT BE ACCEPTED.** To allow staff to complete required internal administrative functions, submittals will be opened, read and the name of each bidder recorded, as a matter of public information, within thirty (30) minutes after the receipt time and date have past.

No Submittal will be considered unless it is submitted on the forms contained herein. **All submittals must be presented in a sealed envelope or box.** The outside of the submittal must be clearly marked with the solicitation number, solicitation title and the submitting company's name. This includes envelopes delivered by Fed Ex, UPS, DHL or other carrier.

2. PRE-BID CONFERENCE

(Not Applicable)

3. INFORMATION REQUESTS

Requests for additional information relating to this bid should be directed to:

Jim Swaziek
Bid & Contract Specialist
480-312-5719
jswaziek@scottsdaleaz.gov

lh
3/27/2013 10:44 AM

INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

4. SOLICITATION QUESTIONS

The Bidder shall submit all questions, requests for clarification and inquiries in regards to this Solicitation to Jim Swaziek, no less than eight (8) days prior to the original Solicitation opening date. It is preferred that all questions be submitted via email to the appropriate purchasing staff, jswaziek@scottsdaleaz.gov, where possible. When submitting any questions the Bidder should indicate the page number, Section Number/Clause Title and if possible paragraph number that is being questioned.

It is your responsibility to give notice, in the form of written questions before the bid opening on any item or issue in this solicitation that you believe should not be included or contained in any amendment to this solicitation or that the City failed to include in this solicitation that should have been included, and by your notice, the City could have cured the problem if the item or issue had been timely raised or objected to.

Failure to give notice may constitute a waiver of your right to object to the inclusion or lack of inclusion of the item or issue in this solicitation in any subsequent protest filed by you.

All questions, regardless of the method they are communicated (email, regular mail or hand delivered), must be clearly marked as "Solicitation Questions" and state the Solicitation number in the subject line of the email or on the outside of the envelope. If questions are not submitted via email, the submittal envelope **MUST** be clearly marked with Solicitation number and words "SOLICITATION QUESTIONS", or it may be mistaken as an actual bid submittal and not be opened immediately.

All Solicitation questions **MUST** be received by the Purchasing Division by **10:00 A.M., LOCAL TIME, MAY 1, 2013**. Any inquiries received after the specified time will be reviewed on an individual basis by the Purchasing staff to determine if a response would be advantageous for the City.

5. APPROVED ALTERNATES

(Not Applicable)

6. ENVIRONMENTAL PROCUREMENT POLICY

The City has established an Environmental Procurement Policy which encourages the inclusion of environmentally responsible products and services available to meet the intended purpose. We encourage the offer of alternatives that broaden the range of environmentally responsible products or services that will meet the performance requirements of this solicitation. **IF YOU WISH TO SUBMIT AN ALTERNATIVE**, follow the procedures specified in the Instructions to Bidders, Approved Alternate Section of this document., unless the approved alternate clause has been deemed not applicable.

INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

7. PURCHASING WEB SITE

The Purchasing web site provides a wide variety of information including: capability to download solicitations and plan sheets (if applicable), invoicing guidelines, how to introduce your products, list of Buyers commodity lines, etc. The web site can be accessed at <http://www.scottsdaleaz.gov/Purchasing>. Registering and downloading a solicitation will also provide the supplier with notices of all addendums that are issued.

8. DOWNLOADING SOLICITATIONS

All solicitation documents; plan sheets/drawings if applicable and addenda are available for download in .pdf format. Bidders may print their own copies of these documents or provide the files to any reprographics/copy center in their area. Bidders will no longer be able to pick-up these documents at the Purchasing Department and plan shipments will no longer be available. There will be one set of plan sheets/drawings (if applicable) available for onsite review only at the Purchasing office located at 9191 E. San Salvador Dr., Scottsdale, AZ 85258.

It is imperative that you download the solicitation from the City website at www.scottsdaleaz.gov in order to be notified of associated addenda.

9. EMAIL NOTIFICATION

The City of Scottsdale does not maintain a bidder list, however, on the City's main web site page, select the Email Subscriptions link and subscribe to receive a notification of Solicitation Opportunities twice weekly. – www.scottsdaleaz.gov

10. CITY OF SCOTTSDALE PROCUREMENT CODE

All procurement activities, conducted by the City of Scottsdale, are in conformance with the rules and regulations of the Scottsdale Procurement Code. A copy of the Code is available for review in the Office of the City Clerk located at City Hall, 3939 Drinkwater Boulevard and the Purchasing Office located at 9191 E. San Salvador Drive, Scottsdale, Arizona. A copy of the Code is also available from the Purchasing website:

http://www.scottsdaleaz.gov/Purchasing/Procurement_Code

A hard copy of the Code is available for purchase, for a fee of \$10.00, at the Purchasing Office.

11. PROSPECTIVE BIDDER'S CONFERENCE

A prospective bidder's conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this document. The purpose of this conference will be to clarify the contents of this Solicitation in order to prevent any misunderstanding of the City's position. This conference will also give Bidders an opportunity to submit any questions and discuss any questions previously submitted.

INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

12. BIDDER'S PRESENTATION

Bidders may be invited to make a presentation. If invited, Bidders will be notified of the date and time of the presentation by the City of Scottsdale Purchasing Department.

13. INELIGIBLE BIDDER

The preparer of the bid specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or Offeror on the solicitation for which they prepared the specification.

14. OBLIGATIONS

The issuance of this Solicitation does not obligate the City to pay any costs incurred in the preparation and submission of proposals.

15. NON COLLUSION AFFIDAVIT

By signing the Offer Form/Signature Page of the solicitation, or other official contract form, the Bidder certifies that:

In connection with the performance of this solicitation or any resulting Contract, the Bidder is stating and certifying that the Contractor/Company has not either directly, or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive proposing in connection with the preparation or submission of its Submittal in response to this solicitation or any potential resulting Contract.

If any company is jointly owned or associated through common officers/employees with another company(s) that is/are responding to the same solicitation, both/all of those companies must take all precautions so as to make sure the preparation of their bid or proposal submittal is done completely independent of the other company(s) or individual(s). Specifically, any individual working on preparation, approving or signing one submittal can have no knowledge of or interaction with any other bid or proposal submission from a different company for that same solicitation.

If the subject matter of this solicitation is construction, the bidder shall submit a completed and Notarized Non Collusion Affidavit, stating and certifying that said Bidder/Company has not either directly, or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive proposing in connection with the preparation or submission of its Submittal in response to this solicitation or any potential resulting Contract. The Bidder is to return the completed and notarized Non Collusion Affidavit with their submittal.

16. IMMIGRATION LAW COMPLIANCE

By signing the Offer Form/Signature Page of this solicitation, the Bidder certifies and warrants that for all solicitations for services (including construction services) it has complied with the E-Verify Program as required by ARS §23-214(A) or will have complied with the requirements of the E-Verify Program before award. Failure to comply with the E-Verify Program may result in the automatic disqualification of the Submittal as being non-responsive or the termination of any contract awarded and the possible forfeiture of any applicable bond.

INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

16. IMMIGRATION LAW COMPLIANCE – CONT'D

The City will include specific "Compliance with Federal and Arizona State Immigration Laws" language in any contract or subcontract it enters into with the successful Bidder. In addition, this language must be included in any subcontracts that the successful bidder enters into with its subcontractors.

17. LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS

Arizona State law A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS/INDIVIDUALS/SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations, Limited Partnerships or General Partnerships)*

By submitting your quote, bid or proposal to the City you are agreeing that if you are selected as the awardee and meet the criteria as a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation in proof of that statement. Types of acceptable documentation copies are an Arizona Driver's License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion prior to issuing any contract.

If you have previously done business with the City and already have filed the above Affidavit with copies of an acceptable documentation please indicate when you submitted it. If your acceptable Affidavit is already on file with the City that will be sufficient to meet this requirement.

If you fail to complete and provide a completed Affidavit and accompanying acceptable copy of your documentation, or not advise us of your prior filing within 10 calendar days of being requested by then you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/Purchasing> on the Vendor Resources page at the bottom right under Forms.

18. TAXES/LICENSES

Federal Excise Taxes:

The City of Scottsdale is exempt from certain federal excise taxes. The most common areas where the City is exempt from Federal excise taxes are:

1. Fuel that is used by the City
2. Communication
3. Heavy trucks, trailers and tractors
4. Certain Superfund activity

If there is a specific circumstance that is in doubt you should contact the City to resolve that status of that Federal Excise tax and its applicability.

INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

18. TAXES/LICENSES – CONT'D

Transaction Privilege (Sales) Taxes on the City:

The City of Scottsdale is not exempt from being charged the appropriate Arizona State, County, and City privilege (sales) taxes on the goods and services that we procure. For suppliers within the state of Arizona the City expects to be charged the appropriate privilege taxes on the invoice. For out of state suppliers that do not have the ability to collect Arizona State privilege taxes the City will self-accrue such Arizona State and City use taxes for collection and payment to the State of Arizona and City of Scottsdale.

Transaction Privilege (Sales) Taxes on the Supplier / Contractor: Certain Business Services and Activities may have a City of Scottsdale Privilege (sales) tax liability. To determine the City of Scottsdale tax treatment please visit the following website and view the City of Scottsdale Tax Code and other Privilege and Use tax resources.

Questions pertaining to the applicability of taxes shall be directed to the City of Scottsdale Tax & License Section at 480-312-2400. The Contractor shall be responsible for payment of all applicable taxes due on contract income whether or not such taxes are specifically separated in the bid amount.

<http://www.scottsdaleaz.gov/taxes/>

Certain Business Services and Activities may have a State Privilege (sales) tax liability. To determine the State tax treatment, please visit the following website or contact the Arizona Department of Revenue at 602-716-6578 or 602-716-6657.

<http://azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=42>

To obtain a State of Arizona Privilege (Sales) Tax License Application, please go to the following website:

<http://www.azdor.gov/Business.aspx>

The City of Scottsdale requires a license for service-oriented businesses located in Scottsdale that do not have a City of Scottsdale transaction privilege (sales) tax liability. This includes all activities or acts including, but not limited to service, professionals, trades and occupations, personal or corporate. To engage or continue in business the owner must obtain a Business, Occupational and Professional license. Service oriented businesses located outside the City limits are NOT required to obtain a Business, Occupational and Professional License from the City of Scottsdale.

Please visit the following website for the City of Scottsdale Transaction Privilege & Use Tax License and the Business, Occupational and Professional License applications:

<http://www.scottsdaleaz.gov/licenses/boplicense>

Bidder is solely responsible for any and all tax obligations which may result out of the bidder's performance of this contract. The City has no obligation to pay any amounts for taxes, of any type incurred by the bidder.

INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

18. TAXES/LICENSES – CONT'D

Construction Related Transaction Privilege (Sales) Taxes Responsibility of the Contractor:

The Contractor shall be responsible for payment of all applicable State of Arizona and City of Scottsdale transaction privilege (sales) taxes due on construction income whether or not such taxes are specifically separated in the bid amount. The taxes are to be reported on either a progressive billing (accrual) basis or cash receipts basis, depending on the method chosen at the time application was made for the Privilege (sales) Tax License.

City Privilege (sales) tax exemptions/deductions may be applicable to certain projects. We advise you to consider this as you prepare your bid. Please review, in detail, Sections 415, 465, and 110 of the Scottsdale Revised City Code, Appendix C to determine if exemptions/deductions are applicable. For tax guidance, please reference the City Code and other tax resources at the following website:

<http://www.scottsdaleaz.gov/taxes/>

The State of Arizona has similar exemptions; please reference ARS Title 42 at the following website:

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=42>

To determine tax treatment of design/build contracts, please contact the Arizona Department of Revenue at 602-255-2060 and the City of Scottsdale Tax Audit Section at 480-312-2629.

Bids will be evaluated and recommended for award based on the total bid cost including tax.

19. CONTRACTOR'S LICENSING REQUIREMENTS

The Contractor shall state his Arizona State Contractor's License Number and Classification on the Bid Form as evidence that he is licensed to contract the work indicated in the specifications at the time of bid submittal.

In accordance with Article 3, Regulation 32-1151 of the Arizona Registrar of Contractors Statutes and Rules, it is unlawful for any person, firm, partnership, corporation, association or other organization, or a combination of any of them, to engage in the business of, submit a bid or respond to a request for qualification/quotation or a request for proposals for construction services as, act or offer to act in the capacity of or purport to have the capacity of a contractor without having a contractor's license in good standing in the name of the person, firm, partnership, corporation, association or other organization at the time of bid submittal, if such licensing is a requirement of the Arizona Registrar of Contractors.

INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

20. LITIGATION

The Bidder will disclose any issue or potential issue that may have a material bearing on the financial condition, solvency or credit worthiness of the organization. Disclosure includes any material contingent liabilities or uninsured potential losses, involuntary contract terminations in other jurisdictions and any voluntary or involuntary bankruptcy filings over the past 7 years. The Bidder will also disclose any litigation in which the Bidder has been involved in, either as a plaintiff or defendant, within the past 3 years, and the Bidder shall agree to notify the City within 24 hours of any litigation or significant potential for litigation of which the Bidder becomes aware. Further, the Bidder will be required to warrant that it will disclose in writing to the City all litigation involving the Bidder, the Bidder's related organization, owners and key personnel.

21. SUBCONTRACTOR'S LIST

If, at the time of bidding, any bidder intends to subcontract any portion of this contract, the bidder must complete the information required on the Subcontractor's List preceding the Bid Form and include this list with bid submittal documents.

22. SUBCONTRACTORS

During the performance of the Contract, the Contractor may engage any additional Subcontractors as may be required for the timely completion of this Contract, unless specifically prohibited by the specification. The addition of any Subcontractors must first receive the approval of the City. The awarded Contractor may relieve Subcontractors of City Tax liability by providing them with a completed Subcontractor Written Declaration form.

In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Contractor. The Contractor assumes responsibility for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

23. CONFIDENTIAL INFORMATION

Requests for nondisclosure of confidential information such as trade secrets and other proprietary data must be made known to the City within the bid submittal.

Bidders are instructed to clearly identify any proprietary information that may be submitted, and, if feasible, package such information in a separate, sealed envelope labeled "Confidential" or "Proprietary".

The City is subject to Arizona statutes and City Charter provisions that permit the inspection of public records. The City cannot insure confidentiality of any portion of a submittal document in the event a public inspection request is made.

INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

23. CONFIDENTIAL INFORMATION – CONT'D

However, in accordance with Section R2-188.23 pertaining to Request for Proposals and Section R2-188.6 pertaining to Invitation for Bids, of the City's Procurement Code, the City shall examine the portions of your proposal noted as "Confidential" and/or "Proprietary". If a determination to disclose the information is made, you shall be so informed.

This is the only notification concerning confidential information that will be given to potential bidders, and this provision should be taken into consideration prior to submitting a bid.

After contract award, and unless otherwise instructed by the bidder, the City shall destroy all information identified as confidential or proprietary in accordance with public records retention requirements.

24. SMALL BUSINESS

Small, minority owned businesses (MBE/WBE/DBE) are encouraged to respond to City of Scottsdale solicitations.

25. INTERPRETATIONS, ADDENDA

THE CITY OF SCOTTSDALE WILL NOT BE RESPONSIBLE FOR BIDDERS ADJUSTING THEIR SUBMITTAL BASED ON ORAL INSTRUCTIONS BY ANY MEMBER OF THE CITY STAFF OR BY THE CITY'S CONTRACTED CONSULTANT OR AGENT. SUBMITTALS DEVIATING FROM THE SPECIFICATIONS CONTAINED HEREIN BY ANY MEANS OTHER THAN AN AUTHORIZED ADDENDUM BY THE PURCHASING DIVISION WILL BE SUBJECT TO REJECTION.

Should a Bidder find an ambiguity, inconsistency or error in the Plans if applicable or Specifications, or should he be in doubt as to their meaning, he shall at once notify the contact person listed on page one of this solicitation, who will prepare a written addendum. The City will not be responsible for oral instructions or information.

All questions shall be submitted as per the Solicitations Questions Clause.

Any Addenda issued by the City during the time of bidding are to be included in the Submittal, and will become a part of the Contract. Bidders must acknowledge receipt of all Addenda on the Bid Form in the space provided or by signing the Offer and Acceptance Form. Failure to indicate receipt of addenda may result in a bid submittal being rejected as non-responsive.

A Notice of Addenda will be emailed to those who have provided their email address; or provided by other appropriate means to each bidder, person or firm recorded on the Plan Holder's list. A viewing copy of the Addenda will also be available wherever the Solicitation Documents are kept.

INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

26. SUBMITTAL PROCEDURE

No submittal will be considered unless it is submitted on the bid forms contained herein (or as otherwise requested). Faxed or emailed submittals will not be considered. Erasures, interlineations or other modifications in the submittal shall be initialed by the authorized person signing the Offer & Acceptance/Proposal Signature Page document.

The Bid Form/Pricing Proposal page (if applicable) containing the pricing must be completed, including the acknowledgement of any and all addendum that was issued. The name of the Contractor/Company must be listed on the page.

To be considered responsive, the Offer and Acceptance Form/Proposal Signature page must be signed and dated by an authorized person(s) eligible to sign contract documents for the contractor and is part of the original bid/proposal submittal due at the stated date and time indicated in the solicitation. Consortiums, joint ventures, or teams entering submittals will not be considered responsive unless it is established that all contractual responsibility rests solely with one bidder or one legal entity. The Submittal must indicate the responsible entity.

Submitters should be aware that joint responsibility and liability will attach to any resulting contract and failure of one party in a joint venture to perform will not relieve the other party or parties of total responsibility for performance.

If you wish to mail your submittal please note that it is the submitter's responsibility to ensure the submittal is received at the Front Desk of the Purchasing Office with enough time to have it time and date stamped on or before the solicitation receipt date and time. Faxed or emailed submittals will not be accepted. **LATE SUBMITTALS WILL NOT BE CONSIDERED.**

Submittals received after the time and date specified will be returned to the bidder unopened. A submittal may be withdrawn prior to the time set for opening submittals.

No submittal may be withdrawn for a period of one hundred and twenty (120) days after the date set for receipt of submittals.

At any time prior to the specified solicitation due time and date a Bidder may withdraw the bid. Faxed withdrawals will not be considered.

Submittals received by the City with the signed Offer on the Offer and Acceptance form/Proposal Signature document constitutes a legally binding offer by the contractor.

27. AWARD DETERMINATION

Responsive proposals will be evaluated based on the evaluation criteria established within the solicitation document. Various elements of the proposal submittal will be reviewed and evaluated against the solicitation requirements. There may or may not be a requested presentation from the top proposals to further understand their proposal and how it responds to the solicitation requirements. Proposers should not assume there will be an opportunity for presentations and should therefore make their proposal submittals comprehensive in response to the solicitation requirements.

INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

27. AWARD DETERMINATION – CONT'D

Upon conclusion of all of the evaluations, a recommendation is made to award to the proposer that best meets the City's needs and provides the best value to the City.

Notwithstanding any other provision of the Request for Proposal, the City expressly reserves the right to:

- (1). Waive any immaterial defect or informality; or
- (2). Reject any or all Proposals, or portions thereof; or
- (3). Reissue a Request for Proposal.
- (4). To award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City.

28. REJECTION OF BIDS

The Purchasing Director or City Council reserves the right, as the interest of the City requires, to reject any or all submittals, to waive any informality in submittals received, to award a contract by accepting or rejecting any alternate submittal(s) (additive or subtractive) and reserves the right to reject the submittal(s) of any bidder who has previously failed to perform competently in any contract with the City.

29. PROTESTS

Pursuant to the City of Scottsdale Procurement Code Section 2-213 an aggrieved person may protest any aspect of a solicitation prior to award of a contract. As used herein, the phrase "any aspect of a solicitation" shall be limited in its interpretation to mean an alleged violation of the City's Procurement Code as it relates to the bid solicitation, its evaluation, or its award.

A protest must be filed within ten (10) calendar days after the protestor, exercising reasonable diligence, knew or should have known of facts and circumstances upon which the protest is based. Failure to protest any issue, fact or circumstance the protestor knew or should have known upon the exercise of reasonable diligence within said ten (10) calendar day period shall forever preclude a hearing based upon that issue, fact or circumstance.

Notice of Awards will be given either through the City Council Meeting Agendas for those contracts being awarded by City Council (i.e., for construction and professional services) or through a Notice of Intent to Award posting, seven (7) calendar days prior to award, on the Purchasing section of the City's Internet Web Site for all administratively awarded contracts. Award of contracts shall be final and no protest pursuant to this section may be filed after award.

A protest must be in writing and shall:

State the name and address of the aggrieved person.

Identify the contracting activity and the number of the solicitation.

INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

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29. PROTESTS – CONT'D

Contain a statement of all the grounds for the protest that the protestor then knows or should know based upon the exercise of reasonable diligence. Include supporting exhibits, evidence or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

Material submitted by a protestor shall not be withheld from an interested party except to the extent that the withholding of information is permitted or required by law or as determined pursuant to code provisions for confidential material.

If the protestor believes the protest contains material that should be withheld, a statement advising the Director of this fact shall accompany the protest submission.

The written protest must be filed with the Purchasing Director at the following address:

City of Scottsdale
Purchasing Services Department
9191 E San Salvador Dr.
Scottsdale, AZ 85258
Attn: James Flanagan, Purchasing Director

The Director may dismiss a protest, upon a written determination, before scheduling a hearing if:

The protest does not state a valid basis for protest; or

The protest is untimely pursuant to Procurement Code Section 2-213.

If the director determines a hearing is appropriate under the circumstances, the director shall notify the protestor of the time and place set for a hearing on the protest. The director may also give notice of the hearing to any other persons involved in the solicitation whose interests may be affected by the ruling requested from the director. Any person whose interest is affected shall be permitted to intervene and participate in such hearing.

Nothing contained herein shall require that the protest hearing be held prior to the award, if evidence from the solicitation, its evaluation or its award cannot be released to the public until after the award in order to protect the competitive process or in the best interests of the City.

30. CONTRACT AWARD NOTIFICATION

Intent to Award notices for contracts conducted as formal solicitations will be posted on Purchasing's website on the Intent to Award listing. Informal solicitations will be posted to the Award listing upon award. Intent to Award and award information can be found at the link provided below:

<https://eservices.scottsdaleaz.gov/eServices/Solicitations/Awards.aspx?CID=0>

INSTRUCTIONS TO BIDDERS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

30. CONTRACT AWARD NOTIFICATION – CONT'D

The City Council must approve award of contracts for construction and professional services exceeding the formal procurement limit. Any contract award going to City Council for approval is not binding on the City until after approval by the City Council, even if previously signed by the Contractor and a City representative. All other contracts exceeding the formal procurement limit may be administratively awarded by the Purchasing Director.

It is the submitter's responsibility to access this information from the City of Scottsdale Purchasing website link provided above. This is the only notification you will receive regarding the posting of Notices of Intent to Award and Award.

31. AWARD OF CONTRACT

A signed response to a Request for Proposal is an offer to contract with the City based upon the Terms, Conditions, Scope of Work and Specifications contained in the City's Request for Proposal and the attached sample Professional Services Contract. **(PLEASE DO NOT FILL IN OR SIGN THE SAMPLE CONTRACT).**

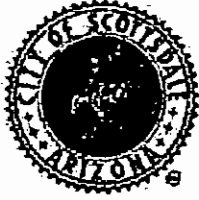
A contract will be formed when the City of Scottsdale City Council awards the Professional Services Contract executed by the selected Offeror.

Once the City has awarded the contract by signing the applicable contract, the Offeror is required to provide all additional Bonds and/or Insurance Certificates and other documentation required to issue the purchase order; within ten (10) calendar days after award. If the Offeror fails to furnish the required documents within the stated ten (10) calendar days they may be considered in default and may be at risk forfeiture of any applicable required Bid Bond. All required documents shall be sent to the Purchasing Representative listed in the solicitation.

32. BID BOND

(Not Applicable)

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1. ADDITIONAL SERVICE REQUESTED

Any service requested which is not specifically authorized by the Contract or written adjustments thereto, requires the issue of a separate purchase order by the City for authorization to perform, and separate billing by the Contractor for payment.

2. ADVERTISING

No advertising or publicity concerning the City using the Contractor's services shall be undertaken without prior written approval of such advertising or publicity by the City of Scottsdale.

3. ARIZONA LAW

The Contract and all Contract Documents are considered to be made under, and will be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions. Any action to enforce any provision of this Contract or to obtain any remedy under this Contract will be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party expressly and irrevocably consents to the jurisdiction and venue of this Court.

4. ASSIGNMENT

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

5. ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

6. AUTHORITY

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

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7. CANCELLATION OF CITY CONTRACTS

The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the City is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. 38-511).

8. CAPTIONS/HEADINGS

The headings used in the Contract Documents are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

9. CERTIFICATE OF INSURANCE

The successful vendor(s) will be required to furnish the City of Scottsdale a certificate of insurance on a standard insurance industry ACORD™ form or its equivalent when separate insurance requirements are listed under clause #29-Insurance Requirements. The ACORD™ form must be issued by an insurance company authorized to transact business in the State of Arizona. A sample of a standard insurance industry ACORD™ form with the required additional insured language can be found on our Vendor Resources webpage under forms at: <http://www.scottsdaleaz.gov/Purchasing>. Failure to provide a Certificate of Insurance with the appropriate verbiage will result in rejection of your certificate and/or may be cause for contract default. Additionally, Certificates of Insurance submitted without referencing the Solicitation Number will be subject to rejection and discarded.

10. CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code. Change orders to contracts may be executed, according to established rules, when provided for in the original contract.

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10. CHANGES IN THE WORK – CONT'D

The Contractor will not perform any additional services without a written Change Order approved by the City. If the Contractor performs additional services without a Change Order, the Contractor will not receive any additional compensation.

11. CHEMICALS

Contractors must agree to provide Material Safety Data Sheets (MSDS) for all substances that are delivered to the City of Scottsdale, that come under the Federal requirements of 29CFR 1910 Subpart Z - Toxic and Hazardous Substances, which includes 29CFR 1910.1200 - Hazard Communication.

All Contractors using chemicals on City of Scottsdale property shall use only the safest chemicals, with the least harmful ingredients. These chemicals shall be approved for use by a City of Scottsdale representative prior to bringing them on property.

Contractors shall make every attempt to apply approved chemicals with highly volatile organic compounds, outside of working hours. Adequate ventilation shall be used at all times during the application of these approved chemicals.

In conjunction with the Occupational Safety and Health Standards, Subpart-Z Toxic and Hazardous Substances, and Section 1910.1200 Hazard Communication, Contractors are hereby informed of the presence of (or possible presence) of chemicals in the area where the work requested will be performed. It is the responsibility of all selected Contractors to contact the City of Scottsdale for specific information relative to the type of chemicals present and location of appropriate material safety data sheets.

12. COMPLIANCE WITH FEDERAL AND ARIZONA STATE IMMIGRATION LAWS

Under the provisions of A.R.S. §41-4401, the Bidder warrants to the City that the Bidder and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Bidder and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Bidder or any of its subcontractors will be considered a material breach of this Contract and may subject the Bidder or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

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

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

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12. COMPLIANCE WITH FEDERAL AND ARIZONA STATE IMMIGRATION LAWS – CONT'D

The City will not consider the Bidder or any of its subcontractors in material breach of this Contract if the Bidder and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the Bidder enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The Contractor will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Contractor's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

13. COMPLIANCE WITH FEDERAL AND STATE LAWS

The City has entered into this Contract with the Bidder relying on his knowledge and expertise to provide the services contracted for. As a part of that reliance, the Bidder represents that he knows and understands the relevant and applicable federal and state laws that apply to the services provided through this Contract, and agrees to comply with these relevant and applicable federal and state laws.

The Bidder understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Bidder must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees".

14. CONFLICT OF INTEREST

The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the City is received by all parties to the contract, unless the notice specifies a later time (A.R.S. 38-511).

15. CONTRACT ADMINISTRATOR DUTIES

The Contract Administrator shall be responsible to audit the billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements.

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16. CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS

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

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

17. CONTRACTS WITH SUDAN AND IRAN

In accordance with A.R.S. §35-391.06 and 35-393.06, the Bidder certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

18. CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Agreement may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

19. COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original.

20. ENDANGERED HARDWOODS

Any construction, building addition or alteration project which is financed by monies of this state or its political subdivisions shall not use endangered tropical hardwood unless an exemption is granted by the Director of the State of Arizona, Department of Administration.

The Director shall only grant an exemption if the use of endangered tropical hardwood is deemed necessary for historical restoration or to repair existing facilities and the use of any substitute material is not practical. Any lease-purchase agreement entered into by this state or its political subdivisions for construction shall specify that no endangered tropical hardwood may be used in the construction unless an exemption is granted by the Director. As used in this subsection, "endangered tropical hardwood" includes ebony, lauan, mahogany or teak hardwood.

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21. ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

22. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract the Bidder will follow the Federal government's Affirmative Action guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex or national origin.

23. ESTIMATED QUANTITIES

All Quantities referenced in this solicitation document are subject to adjustment dictated by City requirements. Quantities at variance with stated bid quantities may be purchased as required.

24. EXECUTION OF CONTRACT

The Contractor shall provide all the required documentation, which can include but may not be limited to, applicable bonds, insurance certificates, IRS W-9 form and other documentation required to issue the purchase order or notice to proceed within ten (10) calendar days after the date of the Acceptance of Offer or Notice of Contract Award by the City. If a separate City Contract is required, the Contractor must execute it within ten (10) calendar days and return it to the City. Failure to complete these requirements within ten (10) calendar days may place the Contractor in default.

25. FORCE MAJEURE

The City shall not be held responsible for acceptance of all or any part of the materials tendered for delivery under this Agreement due to federal, state or municipal action, statute, ordinance or regulation, strike or other labor trouble, fire, windstorm or other incidents outside of the City's control which shall make such acceptance impossible or impractical.

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

26. FUNDS APPROPRIATION

If the City Council does not appropriate funds to continue this Contract and pay for required charges, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice to the CONTRACTOR at least 30 days before the end of its current fiscal period and will pay the CONTRACTOR for all approved charges incurred through the end of this period.

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27. INDEMNIFICATION

To the fullest extent permitted by law, Bidder, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or willful actions, acts, errors, mistakes or omissions by Bidder relating to work or services performed under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Bidder's and Subcontractor's employees.

Insurance provisions set forth in this agreement, if any, are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

28. INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City shall not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

29. INSURANCE REQUIREMENTS

Insurance Representations and Requirements

General

Contractor agrees to comply with all applicable City ordinances and state and federal laws and regulations.

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

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29. INSURANCE REQUIREMENTS – CONT'D

Insurance Representations and Requirements – Cont'd

No Representation of Coverage Adequacy

By requiring the insurance stated in this Contract, the City of Scottsdale does not represent that coverage and limits will be adequate to protect Contractor. City of Scottsdale reserves the right to review any and all of the insurance policies and/or endorsements required by this Contract, but have no obligation to do so. Failure to demand any evidence of full compliance with the insurance requirements stated in this Contract or failure to identify any insurance deficiency does not relieve Contractor from, nor be construed or considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

Coverage Term

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

Claims Made

In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.

Policy Deductibles and or Self-Insured Retentions

The policy requirements may provide coverage which contains deductibles or self-insured retention amounts. Any deductibles or self-insured retention are not applicable to the policy limits provided to City of Scottsdale. Contractor is solely responsible for any deductible or self-insured retention amount. City of Scottsdale, at its option, may require Contractor to secure payment of any deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

Use of Subcontractors

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

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29. INSURANCE REQUIREMENTS – CONT'D

Insurance Representations and Requirements – Cont'd

Evidence of Insurance

Before starting any work or services under this Contract, Contractor must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Contractor's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that this coverage and the provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it is Contractor's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions.

Certificates must specifically cite the following provisions:

1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
2. Contractor's insurance must be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Contractor under this Contract.
4. If the Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

Required Coverage

Commercial General Liability

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

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29. INSURANCE REQUIREMENTS – CONT'D

Required Coverage – Cont'd

Vehicle Liability

Contractor must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Contract. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.

Workers Compensation Insurance

Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

Professional Liability

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

30. LITIGATION

The Bidder will disclose any issue or potential issue that may have a material bearing on the financial condition, solvency or credit worthiness of the organization. Disclosure includes any material contingent liabilities or uninsured potential losses, involuntary contract terminations in other jurisdictions and any voluntary or involuntary bankruptcy filings over the past 7 years. The Bidder will also disclose any litigation in which the Bidder has been involved in, either as a plaintiff or defendant, within the past 3 years, and the Bidder shall agree to notify the City within 24 hours of any litigation or significant potential for litigation of which the Bidder becomes aware. Further, the Bidder will be required to warrant that it will disclose in writing to the City all litigation involving the Bidder, the Bidder's related organization, owners and key personnel.

31. LOCAL CONDITIONS, RULES AND REGULATIONS

The Bidder shall familiarize himself with the nature and extent of the Contract documents, work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.

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32. MODIFICATIONS

Any adjustments, alterations, additions, deletions, or modifications in the terms and/or conditions of this contract must be made by written Change Authorization approved by the Contract Administrator, Purchasing Director and the Contractor.

If Contractor performs any modification without written Change Authorization, the City shall not be obligated to accept said modification.

33. NO PREFERENTIAL TREATMENT OR DISCRIMINATION

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

34. NO WAIVER

The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions of this Contract will not be construed to be a waiver of those provisions, nor will it affect the validity of the Contract Documents, or the right of either party to enforce each and every provision.

No delay or failure of either party in exercising any right hereunder, and no partial or single exercise thereof, shall be deemed to constitute a waiver of such right or any other rights hereunder. All waivers must be in writing and signed by the party to be charged. Any waiver by either party of any requirement hereunder shall be deemed to be a specific limited waiver, and shall not be deemed to be a continuing waiver nor a waiver of any other requirement hereof.

35. ORDER OF PRECEDENCE

In the event of a conflict in the provisions of this solicitation or resulting contract, as accepted by the City and as they may be amended, the following shall prevail in the order set forth below:

1. Signed and fully executed separate Contract or Offer and Acceptance Sheet
2. Special Terms & Conditions of the solicitation
3. General Terms & Conditions of the solicitation
4. Statement or Scope of Work (SOW)
5. Specifications
6. Attachments
7. Exhibits
8. Instructions to Bidders
9. Other documents referenced or included in the solicitation or contract

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36. PATENTS

The Contractor agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City of Scottsdale and its agents or bidders for alleged patent and/or copyright infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this contract and the Contractor further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein.

The City may be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires.

37. PAYMENT TERMS

The City of Scottsdale's payment terms are payment within thirty (30) days except in Title 34 circumstances where payment is required within fourteen (14) days. Payment may be sooner where cash discounts are offered for early payment, however, cash discounts offered will not be considered in determining lowest bidder. In no event will payment be made prior to receipt of an original invoice containing invoice and Purchase Order numbers and receipt of purchased item. The City is not liable for delays in payment caused by failure of the vendor or contractor to send invoice to the address specified below:

CITY OF SCOTTSDALE
ACCOUNTS PAYABLE
7447 E. INDIAN SCHOOL ROAD, #210
SCOTTSDALE, ARIZONA 85251-4468

38. PRICE REDUCTION

If Contractor's, manufacturer, or supplier at any time during the course of this contract, makes a general price decrease, to the Contractor, the Contractor shall promptly notify the City in writing and extend such decrease to the City effective on the date of such general price decrease.

39. RECORDS AND AUDIT RIGHTS

Bidder's and Subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract (all the foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City of Scottsdale, or its authorized representative, to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims based on Bidder's or Subcontractor's actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Contract. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City of Scottsdale or its authorized representative shall have access to said Records from the effective date of this Contract for the duration of the work and until three (3) years after the date of final payment by the City of Scottsdale to Bidder pursuant to this Contract.

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39. RECORDS AND AUDIT RIGHTS – CONT'D

The City of Scottsdale or its authorized representative shall have access, during normal working hours, to all necessary Bidder and Subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this Article. The City of Scottsdale shall give Bidder or Subcontractor reasonable advance notice of intended audits.

Bidder shall require Subcontractors to comply with the provisions of this Article by insertion of the requirements hereof in any subcontract pursuant to this Contract.

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

40. REGISTERED/LICENSES

To be considered responsive, Contractors must be registered/licensed in the State of Arizona, if such registration/license is normally a requirement.

41. REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION IRS W-9 FORM

Upon request, the Contractor shall provide the required I.R.S. W-9 FORM which is available from the IRS website at www.IRS.gov under their forms section.

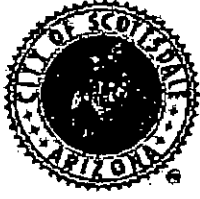
42. RISK OF LOSS

Contractor agrees to bear all risks of loss, injury or destruction of goods and materials ordered as a result of this Invitation for Bid which occur prior to delivery to the City; and such loss, injury, or destruction shall not release Contractor from any obligation hereunder.

The Contractor agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City of Scottsdale and its agents or vendors for alleged patent and/or copyright infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this contract and the Contractor further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein.

The City may be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires.

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43. SCOTTSDALE CITY SEAL AND CITY SYMBOL

The Scottsdale City seal (as defined in S.R.C. § 2-1) and the City symbol are registered marks and are reserved solely for the City's use. Any other use or reproduction of the City's registered marks in any print, digital, or other media and without the City's express, written consent is prohibited. As a breach of this prohibition may impair the City's reputation, dilute its mark(s), or otherwise cause the City irreparable harm, the City shall be entitled to an immediate injunction enjoining such use in addition to any other legal or equitable remedies.

44. SEVERABILITY

If any provision of the Contract Documents or the application of them to any person or circumstance is invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and their application will not be affected and are enforceable to the fullest extent permitted by law.

45. SUCCESSORS AND ASSIGNS

No right or interest covered by this Contract shall be assigned in whole or in part without the prior written consent of the City.

The CONTRACTOR and the City agree that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs and assigns. This Contract extends to and is binding upon the CONTRACTOR, its successors and assigns, including any individual, company, partnership or other entity with or into which the CONTRACTOR merges, consolidates or is liquidated, or any person, corporation, partnership or other entity to which the CONTRACTOR sells its assets.

46. TERMINATION

Termination for Convenience: City reserves the right to terminate this contract or any part hereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. Contractor shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination.

Contractor shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided. Contractor shall not unreasonably anticipate the requirements of this contract.

Cancellation for Cause: City may also terminate this contract or any part hereof with seven (7) days' notice for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any of the terms and conditions of this contract. Late deliveries, deliveries of products which are defective or do not conform to this contract, unsatisfactory performance as judged by the Contract Administrator, and failure to provide City, upon request, with adequate assurances of future performance shall all be causes allowing City to terminate this contract for cause.

GENERAL TERMS AND CONDITIONS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

46. TERMINATION – CONT'D

Cancellation for Cause – Cont'd

In the event of termination for cause, City shall not be liable to Contractor for any amount, and Contractor shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination. If it should be determined that City has improperly terminated this contract for default, such termination may be deemed a termination for convenience.

In the event Contractor is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this contract immediately upon giving notice to the Contractor.

47. TESTING OF MATERIALS

When required in the course of any service or contract the procedures and methods used to sample and test material will be determined by the City. Unless otherwise specified, samples and test will be made in compliance with the following: The City of Scottsdale Minimum Sampling Frequency Guide, The City of Scottsdale Material Testing Manual and the standard methods of AASHTO or ASTM, DSPM and MAG supplements.

The City will provide a pre-qualified City or Independent Testing Laboratory and will pay directly for initial City Acceptance Testing. When the first and subsequent tests indicate noncompliance with the specifications, the cost associated with that noncompliance will be paid for by the Contractor. When the first and subsequent tests indicate noncompliance with the specifications, all retesting will be performed by the same testing agency.

Rejected materials shall be immediately removed and shall not be used in any form for any other part of the work.

48. TIME IS OF THE ESSENCE

The City and the CONTRACTOR mutually agree that time is of the essence with respect to the dates and times contained in the Contract Documents.

49. WARRANTY

Contractor expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Contractor knows or has reason to know the particular purpose for which City intends to use the goods or services, Contractor warrants that such goods or services will be fit for such particular purpose. Contractor warrants that goods or services furnished will conform in all respect to samples. Inspection, test, acceptance of use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use.

GENERAL TERMS AND CONDITIONS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

49. WARRANTY – CONT'D

Contractor's warranty shall run to City, its successors, and assigns. Contractor agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to City, when notified of such nonconformity by City, provided City elects to provide Contractor with the opportunity to do so. In the event of failure of Contractor to correct defects in or replace nonconforming goods or services promptly, City, after reasonable notice to Contractor, may make such corrections or replace such goods and services and charge Contractor for the cost incurred by City in doing so. Contractor recognizes that City's requirements may require immediate repairs or reworking of defective goods, without notice to the Contractor. In such event, Contractor shall reimburse City for the costs, delays, or other damages which City has incurred.

SPECIAL TERMS AND CONDITIONS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

1. ACCEPTANCE / AGREEMENT

Contractor shall act under the authority and approval of the Contract Administrator for the City, further named herein, to provide the services required by this Contract.

Any Contract/Agreement made pursuant to this solicitation must be accepted in writing by the Offeror. If for any reason the Offeror should fail to accept in writing, any conduct by Offeror which recognizes the existence of a Contract/ Agreement pertaining to the subject matter hereof shall constitute acceptance by Offeror of the Contract/Agreement and all of its terms and conditions. Any terms proposed in Offeror's acceptance of City's Contract which adds to, varies from or conflicts with the terms herein are hereby objected to. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the Contract/Agreement between the parties and may hereafter be modified only by written instrument executed by the authorized representatives of both parties.

2. CITY OBSERVED HOLIDAYS

City holiday time frame to be 6:00 P.M. the eve of the holiday until 6:00 A.M. on the day after the holiday.

City Holidays Include: New Years, Martin Luther King, Presidents, Memorial, July 4th, Labor Day, (Thanksgiving – Thursday and Friday of the third week in November), Christmas.

- | | |
|---------------------------|--|
| a. Independence Day | July 4th (or Friday before or Monday after) |
| b. Labor Day | 1st Monday in September |
| c. Thanksgiving Day | 4th Thursday in November |
| d. Day after Thanksgiving | 4th Friday in November |
| e. Christmas Day | December 25th (or Friday before or Monday after) |
| f. New Year's Day | January 1st (or Friday before or Monday after) |
| g. Martin Luther King Day | 3rd Monday in January |
| h. President's Day | 3rd Monday in February |
| i. Memorial Day | Last Monday in May |

3. FUEL SURCHARGES

Fuel surcharges shall NOT be allowable during the term of this contract.

SPECIAL TERMS AND CONDITIONS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

4. INVOICING

All invoices submitted for work done under the scope of this contract **MUST BE ITEMIZED**. Itemized invoices shall contain a **MINIMUM** of the following information:

- Vendor Name
- Remit to Address
- Purchase Order Number
- Invoice Date
- Invoice Number
- Date service/work was completed
- Complete description of work completed
- Location where service/work was performed
- Itemized list of all charges (quantity, description, unit pricing per the contract)
- Tax Amount (if applicable)
- Total Invoice Amount

The Contractor shall submit invoices with all supporting documentation within thirty (30) days after the service/work is completed and approved by the Contract Administrator.

5. MULTIPLE AWARDS

If deemed to be in the City of Scottsdale's best interests, the City reserves the right to award multiple contracts as a result of the solicitation process. While multiple awards are possible, the preferred procedure is to make a single award for each commodity or category of commodity.

6. PURCHASING PROCEDURE

All orders require a City of Scottsdale purchase order that will be communicated by phone, fax or e-mail. No parts or commodities or work shall be rendered/are to be delivered without the issuance of a City of Scottsdale purchase order. Any invoices received from the Contractor without a City of Scottsdale purchase order number, referenced on the invoice, may remain unpaid.

7. TERM OF AGREEMENT

The term of this Contract shall be for a one (1) year period from the effective date of acknowledgment of the City Council awarded Professional Services Contract.

The City and Contractor may mutually agree to extend this Contract for four (4) additional one (1) year periods, upon the recommendation of the Contract Administrator, concurrence of the Purchasing Director.

SPECIFICATIONS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

- 1.0 The City of Scottsdale intends to award multiple contracts for the provision of public defender services for the City of Scottsdale City Court.
- 2.0 The Contractor shall provide legal representation to indigent or quasi-indigent criminal defendants ("Defendants"), when appointed to do so by a judge or judge pro tem of the Scottsdale City Court.
- 3.0 The Contractor shall provide legal representation from the time of appointment through sentencing per Rule 6.3 (b) and complete the following, as applicable:
 - motions
 - trial
 - sentencing
 - or completion of the Rule 11 process
- 4.0 The Contractor shall review the appeal process with defendant at sentencing, if applicable.
- 5.0 The Contractor shall provide legal representation to defendants, when appointed to do so by the Scottsdale City Court for appeals.
- 6.0 Cases on appeal are considered a separate case assignment from the trial docket assignment and shall be paid and counted as a new case assignment, whether assigned to a different, but City authorized public defender, or "re-assigned" to the original Contractor.
- 7.0 The total numbers of cases assigned to a Contractor SHALL NOT exceed three hundred (300) misdemeanor cases per contract year and shall include both trial and appellate appointments.
- 8.0 In the event a single defendant is involved in multiple cases, the number of cases attributed toward the Contractor shall be determined by each judicial appointment of Public Defender representation.
- 9.0 The Contractor shall appear personally for defendants whom they are appointed to represent in all matters set in the City Court, including but not limited to:
 - initial appearance
 - pre-trial conferences
 - motions
 - quashing of warrants
 - trials
 - pleas
 - sentencing
- 10.0 The Contractor shall represent defendants in matters relating to appeals only when assigned or "re-assigned" based on judicial appointment.
- 11.0 The Contractor shall only appear in courts of general jurisdiction on behalf of defendants when it is necessary and appropriate to do so, including but not limited to, for purposes of:
 - appeal
 - special action or
 - Rule 11 hearings or
 - cases on appeal when assigned or "re-assigned" based on judicial order

SPECIFICATIONS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

- 12.0 The Contractor shall pay ALL costs and expenses incurred in the representation of defendants, except as otherwise expressly provided in these specifications and resulting Professional Services Contract.
- 13.0 "Costs and expenses", as used here shall include, but are not limited to:
- office rent
 - business expenses related to the maintenance and operation of an office
 - transportation
 - photographs
 - photocopies
 - secretarial services
 - law clerks
 - transcriptions (other than appeal transcripts)
 - depositions
 - preparation of reports required by the Professional Services Contract
- 14.0 The Contractor shall also be responsible for obtaining any appellate transcripts and the defendant shall be responsible for payment to obtain any appellate transcripts, unless the Court authorizes, in advance, the reimbursement or waiver of cost.
- 15.0 The City of Scottsdale City Court shall provide interpreters for in-court translation only. The City prosecutor's office will provide any police reports or departmental reports (DR's) required to perform this Contract, pursuant to the Arizona Rules of Criminal Procedure.
- 16.0 The Court may also reimburse the Contractor for costs incurred for certain necessary support services, subject to prior motion and a finding made by a Judge or Judge pro-tem of the City Court that such services are indispensable to the interests of justice.
- 17.0 The Contractor agrees that Scottsdale City Court Public Defender appointed case settings shall take precedence over civil cases and all other criminal cases in other courts which do not have precedence as provided for by the Arizona Rules of Criminal Procedure.
- 18.0 In the event a case involves two (2) or more defendants, the Scottsdale City Court shall appoint such additional Public Defender representation as is necessary to avoid a conflict of interest, the appearance of impropriety or as otherwise required in the interests of justice.
- 19.0 The Contractor acknowledges and agrees that the resulting Professional Services Contract to accept court appointments and provide Public Defender services to indigent and quasi-indigent defendants is non-exclusive and the City Court may enter into such other, similar contracts with other contractors as may be deemed to be reasonably necessary to provide Public Defender services to its indigent criminal defendants.
- 20.0 The Contractor shall maintain current case logs, disposition records, time sheets, and provide, if requested, written reports containing sufficient and pertinent information as required by the City of Scottsdale Court for the purpose of audit and evaluation of Contractor invoices under the resulting Professional Services Contract.

SPECIFICATIONS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

- 21.0 In the event the City of Scottsdale Court makes a determination of non-indigence of a defendant after initial appointment of a Public Defender has been made, further representation of the non-indigent defendant by the Contractor in the case shall not be undertaken for a fee unless approved by the Presiding Judge.
- 22.0 The Contractor shall provide for substitution of counsel, at their own expense, when the Contractor is unable for any reason to appear in Court to provide legal representation, as described above, for a defendant, who the Contractor has been appointed to represent.
- 23.0 The Contractor shall file in a timely manner with the City of Scottsdale Court a Notice of Substitution (or Notice of Association, as applicable) of Counsel with the name, address and telephone number of substitute counsel.
- 24.0 The substitution of counsel must also meet the requirements listed in 22.0 below.
- 25.0 A Scottsdale City Public Defender may be substituted for another Scottsdale City Public Defender on an assigned case.
- 26.0 No other attorney may be substituted for a Scottsdale Public Defender unless approved by the Presiding Judge upon motion.
- 27.0 The name and qualifications of any legal counsel, who may be employed in the performance of the resulting Professional Services Contract, shall be set forth in the Presiding Judge's motion.
- 28.0 Each task assigned to the Contractor as part of the Professional Services Contract shall be reviewed and approved by the City's Contract Administrator to determine acceptable completion.
- 29.0 The City of Scottsdale Court or Contract Administrator shall provide all necessary information to the Contractor for timely completion of the tasks specified herein.
- 30.0 All documents, including but not limited to, data compilations, studies, and reports, which are prepared by the Contractor in the performance of the resulting Professional Services Contract, except those that are subject to legal privilege (e.g., attorney-client communications), are to be and remain the property of the City of Scottsdale Court and are to be delivered to the City's Contract Administrator before final payment is made to the Contractor.
- 31.0 The Contractor agrees to forward all files, logs, records, documents, reports, calendars, relating to legal representations pending at the time of the appointment of any successor Public Defender, who may be appointed by the City of Scottsdale Court. The Attorney shall forward all such materials to the successor Public Defender, within five (5) calendar days of receiving written notice of such appointment.
- 32.0 The Contractor agrees to forward all files, logs, records, documents, reports, calendars, relating to legal representations pending at the time of the appointment of any successor Public Defender, who may be appointed by the City of Scottsdale Court.

SPECIFICATIONS



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

33.0 The Contractor shall forward all such materials delineated in 31.0 to the successor Public Defender, within five (5) calendar days of receiving written notice of such appointment.

34.0 Suspension of Indigent Appointments:

34.1 Should the Contractor experience an indigent caseload that prevents the Contractor from giving effective assistance of counsel to each defendant, the Contractor shall move the Presiding Judge for a suspension of indigent appointments until such congestion clears.

34.2 Notice of any motion filed by the Contractor pursuant to this provision shall be given to the Scottsdale City Prosecutor by the Contractor.

34.3 The City of Scottsdale Court Presiding Judge, upon receipt of a motion filed pursuant to this section will set the matter for hearing not later than five (5) days from its filing.

34.4 Should there be a finding at such hearing that the Contractor's indigent caseload is excessive and is adversely interfering with the Contractor's ability to provide effective Public Defender services; the City of Scottsdale Court Presiding Judge may suspend further indigent appointments to the Contractor.

34.5 The Contractor shall notify the City of Scottsdale Court Presiding Judge immediately when the excessive caseload has been relieved sufficiently to permit reinstatement of the regular appointment procedure.

34.6 During any period of suspension of appointments imposed by the City of Scottsdale Court Presiding Judge, the Contractor shall notify the City of Scottsdale Court Presiding Judge in writing, weekly, as to the status of the Contractor's caseload as it relates to resumption of the regular appointment procedure.

34.7 At the expiration of any suspension period ordered by the City of Scottsdale Court Presiding Judge, or earlier if so notified by the Contractor, the City of Scottsdale Court Presiding Judge will set a hearing for the purpose of determining whether such suspension should be lifted, or, if a further suspension of appointments should be granted.

34.8 Suspension of appointments under this section affects only the appointment of new defendants to the Contractor for legal representation and in no other way releases either party from other duties or obligations pursuant to the resulting Professional Services Contract.

35.0 ATTORNEY FEES AND RATE INCREASES

35.1 The Contractor shall receive payment of the sum of two hundred and fifty dollars (\$250.00) per case assigned.

SPECIFICATIONS



CITY COURT PUBLIC DEFENDER SERVICES

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- 35.2 The Contractor shall be paid only upon submittal of an invoice by Scottsdale City Court where City of Scottsdale Court staff will verify the case number and proof of the Contractor being appointed to the case.
- 35.3 Fee increases may only be requested by the Contractor, thirty (30) days prior to the anniversary date of any such resulting Professional Services Contract.
- 35.4 Failure of the Contractor to request a fee increase thirty (30) days prior to the anniversary date of the Professional Services Contract may result in the denial of any fee increase requested.
- 35.5 Fee increases will become effective only after approval by the City of Scottsdale Presiding Judge and will be effective for only one year from the date of approval.

SUBMITTAL REQUIREMENTS CHECKLIST



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

It is preferred that all submittals be prepared on 8½" X 11" paper and printed on one (1) side only. Foldout pages should be kept to a minimum. Offerors are reminded that the Evaluation Committee's ability to evaluate the proposals is dependent upon the organization, detail and readability of the submittal documents. A clear, complete and adequate response is very important. Please format your response to correspond with the areas listed below in the order they are listed below.

The Offeror's submittal should not exceed a **MAXIMUM of one hundred (100)** pages in length (single sided 8½" X 11" paper) and **MUST** include a **MINIMUM** of the following items listed below. **NOTE:** Total page count excludes cover letter, section dividers, table of contents, pre-printed material, City's Signature Page, and Disclosure Forms.

To constitute a valid responsive proposal by the Offeror to this solicitation, the Offeror's submittal **MUST** include a **MINIMUM** of the following items:

<input type="checkbox"/>	Proposal Signature Page - Fully completed Proposal Signature Page, signed in ink.
<input type="checkbox"/>	General Disclosure Form – Fully completed General Disclosure Form, signed in ink
<input type="checkbox"/>	Litigation Disclosure Form – Fully completed Litigation Disclosure Form, signed in ink
<input type="checkbox"/>	<p>Experience Summary Letter – The Offeror shall submit a summary document that illustrates the Offeror's and the Offeror's employee's experience providing similar services as defined in the scope of work presented in this Solicitation. The document should include a MINIMUM of the following items:</p> <ul style="list-style-type: none"> ➤ Offeror's document shall demonstrate previous experience handling misdemeanor cases. ➤ Offeror's document shall demonstrate previous experience representing persons charged with criminal offenses, and include their prior service as a Public Defender.
<input type="checkbox"/>	<p>Firm and Staff Qualification Summary Letter – The Offeror shall submit a Firm and Staff Qualification summary document that illustrates the Offeror's understanding of the objectives of this Solicitation, as well as the qualifications, training and other credentials that illustrate the Offeror and employee's abilities to successfully complete the scope of work represented in this Solicitation. The Firm and Staff Qualifications document should include a MINIMUM of the following items:</p> <ul style="list-style-type: none"> ➤ Offeror's document shall contain a synopsis of the firm's history, including a statement indicating the length of time the Offeror has been doing business in the Phoenix Metropolitan area. ➤ Offeror's document shall detail any special skills, knowledge or certification they possess relative to criminal defense representation. ➤ Offeror's document shall detail any proficiency in a foreign language. ➤ Offeror's document shall indicate whether they are in compliance with continuing legal education requirements. ➤ Offeror's document shall list all sub-consultants (if any) that will be used in the completion of work identified herein, and the sub-consultants envisioned role.

SUBMITTAL REQUIREMENTS CHECKLIST



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

<input type="checkbox"/>	Key Personnel Resume and Qualifications – Offeror's proposal shall include the qualifications of the key personnel that will be involved in projects covered by the scope of this solicitation and the individuals anticipated role in the project. The qualifications provided shall include resumes, academic credentials, applicable training classes, Professional Certifications, Professional Association Memberships, etc.
<input type="checkbox"/>	Reference List – Offeror's proposal include a MINIMUM of three (3) letters of reference.
<input type="checkbox"/>	Exceptions – Offeror shall include all exceptions taken in regards to the terms and conditions as specified in this solicitation document, any award documents, or attached contracts. All exceptions taken by the Offeror shall be clearly defined and the changes requested clearly identified in their submittal document. Exceptions taken by the Offeror shall be used in the evaluation process. If the Offeror does not indicate exceptions in their submittal document this will signify to the City that the Offeror is in full agreement with all areas of the solicitation document, attached award documents and contracts, and agree to all terms as stated.
<input type="checkbox"/>	Proposal Copies – Identify and submit one (1) <u>unbound</u> original and four (4) <u>bound</u> copies of the Offeror's proposal, in addition to the required hardcopies, please also provide an electronic copy of the Offeror's <u>complete</u> proposal. This electronic copy shall be <u>one (1) file</u> , on a Compact Disc (CD), in Adobe® Acrobat format (PDF), and be an electronic representation of the Offeror's complete proposal document (executed signature page and disclosure forms, quotation page, sample documents, all attachments, brochures, pamphlets, etc.). The CD shall be labeled with the solicitation number, along with the Offeror's company name.

EVALUATION CRITERIA



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

GENERAL

After receipt of all proposals, each submittal shall be screened to determine if any shall be deemed non-responsive. Unsigned proposals, unacknowledged Addenda, incomplete proposals, non-conformance with mandatory requirements, etc., may result in the determination of non-responsive.

Subsequent to the initial review, all remaining proposals shall be reviewed by the Proposal Evaluation Committee.

PROPOSAL EVALUATION

All responsive proposals shall be evaluated by the Proposal Evaluation Committee using the weighting and criteria listed below. The recommendation for contract award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the City when applying the following criteria and weighting.

The following is the weighting of criteria that will be used to review the proposals:

EVALUATION CRITERIA	WEIGHTING
Experience	50%
Firm and Staff Qualifications	30%
Overall Proposal / References	20%

Offeror may be invited to make a presentation, but Offeror should not rely on a possible presentation to present their qualifications and offered services. If invited, the Offeror will be notified of the date and time of the presentation by the Contract Administrator. Results of any presentation may be used to determine the contract award.

Each proposal will be reviewed in entirety and assigned a score with respect to each of the criteria. The proposals will be ranked by the evaluation committee according to their total weighted ranking.

The evaluation committee may establish a short list of those proposals considered most advantageous to the City of Scottsdale.

- Short-listed Offerors may be invited to make presentation. At the presentation, the evaluation committee will score each Offeror.
- At the conclusion of all presentations, an overall ranking of proposals will be performed, combining the results of the proposal evaluations and the presentations.

PROPOSAL SIGNATURE PAGE



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

The undersigned hereby offers and agrees to furnish the material, or service, in compliance with all the terms and conditions, instructions, specifications, and any amendments contained in this Request for Proposal document and attached Professional Services and any written exceptions in the offer accepted by the City.

The Offeror also certifies it is in compliance with the Non Collusion, Contracts with Sudan and Iran, and the Immigration Compliance and Federal and Arizona State Immigration Laws requirements of the solicitation.

Company Name

Signature of Authorized Person

Address

Printed Name

City State Zip

Title

Telephone Number

Fax Number

Date

E-Mail Address

The Offeror hereby acknowledges receipt of and agrees this submittal is based on the following Addenda.

ADDENDUM # _____ DATED _____

ADDENDUM # _____ DATED _____

NO BID: If no bid please state reason: _____

Proposal must be signed by a duly authorized representative eligible to sign contract documents for the firm. Consortiums, joint ventures, or teams submitting proposals will not be considered responsive unless it is established that all contractual responsibility rests solely with one contractor or one legal entity. The Proposal must indicate the responsible entity.

Offerors should be aware that joint responsibility and liability will attach to any resulting contract and failure of one party in a joint venture to perform will not relieve the other party or parties of total responsibility for performance

SUBCONTRACTOR'S LIST



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

COMPANY NAME: _____

If any Offeror intends to subcontract any portion of this contract, the Offeror must submit the name, address, license number (if applicable) of each subcontractor including the extent of such subcontracting and include with bid submittal documents. (Offeror may supply additional pages as needed to identify all subcontractors).

NAME: _____ LICENSE: _____

ADDRESS: _____

CONTACT PERSON/TELEPHONE#: _____

EMAIL ADDRESS: _____

EXTENT OF WORK: _____

NAME: _____ LICENSE: _____

ADDRESS: _____

CONTACT PERSON/TELEPHONE#: _____

EMAIL ADDRESS: _____

EXTENT OF WORK: _____

NAME: _____ LICENSE: _____

ADDRESS: _____

CONTACT PERSON/TELEPHONE#: _____

EMAIL ADDRESS: _____

EXTENT OF WORK: _____

NAME: _____ LICENSE: _____

ADDRESS: _____

CONTACT PERSON/TELEPHONE#: _____

EMAIL ADDRESS: _____

EXTENT OF WORK: _____

REFERENCES



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

List minimum of THREE (3) Arizona customers, excluding the City of Scottsdale, for whom your company has provided service(s) of a similar scope as this Invitation for Bid, during the past three years. Include the length of any contracts listed. Offerors may make multiple copies of this document as needed.

The following questions are asked to enable the evaluation team to assess the qualifications of Offerors under consideration for final award. This information may or may not be a determining factor in award of this Solicitation.

Company Name: _____

Company Address: _____

City/State/Zip: _____

Contact Person: _____ Telephone #: _____

Email: _____ Date of Service: _____

Type of Service Provided: _____

Company Name: _____

Company Address: _____

City/State/Zip: _____

Contact Person: _____ Telephone #: _____

Email: _____ Date of Service: _____

Type of Service Provided: _____

Company Name: _____

Company Address: _____

City/State/Zip: _____

Contact Person: _____ Telephone #: _____

Email: _____ Date of Service: _____

Type of Service Provided: _____

YOUR COMPANY NAME: _____

OFFEROR GENERAL DISCLOSURE FORM



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

Offeror shall respond to each of the questions below by checking the appropriate box and provide supplemental information as needed. Failure to fully and truthfully disclose the information required by this disclosure form may result in the disqualification of your submittal from consideration or termination of the contract, once awarded.

Debarment / Suspension Information – Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

YES

NO

If "YES", in an attachment to this form identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

Surety Information – Has the Respondent or any of its principals ever had a bond or surety cancelled or forfeited?

YES

NO

If "YES", in an attachment to this form identify the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

Bankruptcy Information – Has the Respondent or any of its principals ever been declared bankrupt or filed for protection from creditors under State or Federal proceeding in the last seven (7) years?

YES

NO

If "YES", in an attachment to this form identify the date, court, jurisdiction, case number, amount of liabilities and amount of assets.

Signature

Title

Printed Name

Date

COMPANY NAME: _____

OFFEROR LITIGATION DISCLOSURE FORM



CITY COURT PUBLIC DEFENDER SERVICES

RFP # 13RP025

Offeror shall respond to each of the questions below by checking the appropriate box and provide supplemental information as needed. Failure to fully and truthfully disclose the information required by this disclosure form may result in the disqualification of your submittal from consideration or termination of the contract, once awarded.

Have you or any member of your Firm or Team to be assigned to this contract ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

YES

NO

Have you or any member of your Firm or Team to be assigned to this contract ever been terminated (for cause or otherwise) from any work being performed for the City of Scottsdale or any other Federal, State or Local Government?

YES

NO

Have you or any member of your Firm or Team to be assigned to this contract ever been involved in any claim or litigation with the City of Scottsdale or any other Federal, State or Local Government during the last ten (10) years?

YES

NO

If you answered "YES", to any of the above questions, in an attachment to this form, please indicate the name(s) of the person(s), the nature, and status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable.

Signature _____

Title _____

Printed Name _____

Date _____

COMPANY NAME: _____



**CITY OF SCOTTSDALE
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, entered into this ____ day of _____, 201_, between the City of Scottsdale, an Arizona municipal corporation, the "City", and _____, the "Consultant".

WITNESSETH

The Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

The City desires to contract for

The Consultant is duly qualified to perform the requested services; and

In consideration of the mutual promises and obligations stated in this Contract, the parties agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant will act under the authority and approval of the Contract Administrator for the City, as named below, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The entire Request for Proposal No. (rfp number) identified as (description) is incorporated into this Contract by this reference as fully as if written out below. Consultant's proposal submitted in response to Request for Proposal Number (rfp number) and dated (date) is incorporated into this Contract by this reference as fully as if written out below.

If any provision incorporated by reference from the Request for Proposal conflicts with any provision of the Consultant's proposal, the provision of the Request for Proposal will control. If any provision of the Consultant's proposal conflicts with any provision of this Contract, this Contract will control.

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task must be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City will provide all necessary information to the Consultant for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 BILLING RECORDS, AUDIT

The time spent for each task must be recorded and submitted to the Contract Administrator. Consultant must maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and makes these materials available for audit by the City in accordance with Section 4.7 of this Contract.

2.2 FEE SCHEDULE

Option A

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

Consultant will be paid according to following schedule:

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

OR

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

Options

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

OR

Approved expenses must not exceed \$ _____.

OR

Amounts indicated in this Section 2.2 represent the entire amounts payable under this Contract. Additional expenses will not be authorized.

2.3 PAYMENT APPROVAL

All charges must be approved by the Contract Administrator before payment.

2.3.1 PAYMENT TERMS

The City of Scottsdale's payment terms are payment within thirty (30) days after approval by Contract Administrator. In no event will payment be made prior to receipt of an original invoice containing invoice and proper reference numbers. The City is not liable for delays in payment caused by failure of the vendor or contractor to send invoice to the address specified below:

City of Scottsdale
Accounts Payable
7447 E. Indian School Road, Ste 220
Scottsdale, Arizona 85251-4468

2.4 PRICE ADJUSTMENT

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

Options

Term of the Contract is until the tasks listed in 1.1 have been completed according to the following schedule:

In the event that any tasks remain incomplete after the specified completion time period, continuation of this Contract will be subject to written approval by the Contract Administrator.

OR

The term of this Contract is for a period. This Contract must be approved by the City Council of the City of Scottsdale, Arizona and signed by its Mayor and attested by the City Clerk. The City and Consultant may mutually agree to extend this Contract for upon the recommendation of the Contract Administrator and the concurrence of the Purchasing Director without returning to Council. OR

The term of this Contract is for a period. This Contract must be approved by the City Council of the City of Scottsdale, Arizona and signed by its Mayor and attested by the City Clerk. The City and Consultant may agree to extend this Contract for upon the recommendation of the Contract Administrator, concurrence of the Purchasing Director and reauthorization by a specific Council action.

This Contract is in full force and effect when it is signed by the City and the Consultant. The term of this Contract is for a period. The City and Consultant may mutually agree to extend this Contract for upon the recommendation of the Contract Administrator and the concurrence of the Purchasing Director.

This Contract will expire on _____. This Contract must be approved by the City Council of the City of Scottsdale, Arizona and signed by its Mayor and attested by the City Clerk.

This Contract will expire on _____. This Contract is in full force and effect when it is signed by the City and the Consultant.

3.2 **TERMINATION**

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

SAMPLE

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

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this contract immediately upon giving notice to the Consultant.

If the City cancels this Contract or any part of the Contract services, the City will notify the Consultant in writing, and upon receiving notice, the Consultant must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Consultant must deliver to the City all drawings, special provisions, reports, and other documents, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be at the City's sole responsibility.

The Consultant must appraise the work it has completed and submit its appraisal to the City for evaluation. At that time, the Consultant will be entitled to be paid for Work performed and accepted by the City before the default.

If the Consultant fails to fulfill in a timely and proper manner its obligations, or if the Consultant violates any of the terms of this Contract, the City may withhold any payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section.

3.3 FUNDS APPROPRIATION

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

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the specified services. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract is governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

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

4.5 SUCCESSORS AND ASSIGNS

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

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City will be (contract administrator) or designee. The Contract Administrator will oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements. The Consultant must channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

The City may audit all of the Consultant's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this contract must be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees in accordance with the execution of the contract. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Consultant's records and personnel in accordance with the provisions of this section throughout the term of this contract and for a period of 3 years after last or final payment.

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

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

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to cancel this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

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

4.12 NOTICES

All notices or demands required to be given in accordance with the terms of this Contract must be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this section.

In the case of Consultant:

In the case of City:

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail. Notice by facsimile or electronic mail is not adequate notice.

4.13 FORCE MAJEURE

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

4.14 TAXES

Consultant is solely responsible for any and all tax obligations which may result out of the Consultants performance of this contract. The City has no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.15 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without first obtaining the written approval for the advertising or publicity by the City Contract Administrator.

4.16 COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract will be considered to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

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

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

The Consultant will pay its Subcontractors within 7 calendar days of receipt of each progress payment from the City. The Consultant will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Consultant will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Consultant. No Contract between the Consultant and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

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

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

4.19 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If any changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment will be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

4.20 CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

4.21 COMPLIANCE WITH FEDERAL AND STATE LAWS

The Consultant understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. In addition, the Consultant understands and acknowledges the applicability of A.R.S. §34-301 and 34-302.

4.22 IMMIGRATION LAW COMPLIANCE

Under the provisions of A.R.S. §41-4401, the Consultant warrants to the City that the Consultant and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Consultant and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

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

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

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

4.23 **LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS**

A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that verifies that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS / INDIVIDUALS / SOLE PROPRIETORSHIPS as indicated by your W9 Filing. (This law does not apply to LLP's, LLC's, PLLC's, Corporations Limited Partnerships or General Partnerships)

By submitting your quote, bid, proposal and/or indicating your desire to enter in a contract with the City you are agreeing that if you are selected as the awardee and meet the criteria of a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation to verify of that statement. Types of acceptable documentation copies are an Arizona Drivers License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion before to issuing any contract.

If you have previously done business with the City and have already filed the above Affidavit with copies of an acceptable documentation please indicate when you filed the affidavit. If your approved Affidavit is already on file with the City, you have complied with this requirement.

If you fail to provide a completed Affidavit and accompanying copy of your acceptable documentation, or if you do not advise the City of your previous filing within 10 calendar days after receiving the City's request you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/Purchasing> on the Vendor Resources page at the bottom right under Forms.

4.24 CONTRACTS WITH SUDAN AND IRAN

In accordance with A.R.S. §35-391.06 and 35-393.06, the contractor certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).

4.25 NO PREFERENTIAL TREATMENT OR DISCRIMINATION

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

4.26 INDEMNIFICATION

To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subcontractor's employees.

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

4.27 OWNERSHIP OF PROJECT DOCUMENTS

All documents, including but not limited to notes, records, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Consultant.

When the work detail covers only the preparation of preliminary reports or documents, there will be no limitations upon the City concerning use of the ideas or recommendations in the reports or documents. The City will release the Consultant from any liability for the preparation and use of preliminary reports or documents.

Any use of the project documents for purposes other than intended under this Contract will be at the sole risk of the City, and the Consultant will not be liable for any losses or injuries arising out of that use.

4.28 COMPLETENESS AND ACCURACY

The Consultant will be responsible for the completeness and accuracy of work prepared by the Consultant and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Consultant. Additional work or construction added to the project will not be the responsibility of the Consultant unless the need for additional work or construction was created by any error, omission, or negligent act of the Consultant. The City's acceptance of the Consultant's work will not relieve the Consultant of any of its responsibilities. The professional standard to which the Consultant is held will be that of a similar Consultant as practiced in the State of Arizona.

4.29 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES

The total Scope of the Consulting Services to be performed is stated in this Contract. Any services requested outside the scope of work are additional services. The Consultant will not perform these additional services without a written Change Order approved by the City. If the Consultant performs additional services without a Change Order, the Consultant will not receive any additional compensation.

4.30 EQUAL EMPLOYMENT OPPORTUNITY

The Consultant will comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). The Consultant will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

4.31 EVALUATION OF CONSULTANT'S PERFORMANCE

The Consultant will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (linework, lettering, etc.)
- Working relationship with City staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

4.32 THIRD PARTY BENEFICIARY

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the Consultant, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and the Consultant and not for the benefit of any other party.

4.33 CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS

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

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

5.0 INSURANCE

A current standard Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.

5.1 Insurance Representations and Requirements

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

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

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

5.1.4 Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.

5.1.5 Policy Deductibles and or Self-Insured Retentions: The policy requirements may provide coverage which contain deductibles or self-insured retention amounts. These deductibles or self-insured retention must not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant is solely responsible for any deductible or self-insured retention amount. City of Scottsdale, at its option, may require Consultant to secure payment of the deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

5.1.6 Use of Subcontractors: If any work under this Contract is subcontracted in any way, Consultant must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as stated in this Contract protecting City of Scottsdale and Consultant. Consultant is responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

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

1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to Underlying insurance as required.
2. Consultant's insurance must be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Contract.
4. If the Consultant receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Consultant's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

5.2 Required Coverage

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

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

5.2.3 Vehicle Liability: Consultant must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.

5.2.4 Workers Compensation Insurance: Consultant must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 SEVERABILITY AND AUTHORITY

6.1 SEVERABILITY

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 AUTHORITY

Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

7.0 REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at www.irs.gov under their forms section.

8.0 SOFTWARE LICENSES

If The Consultant provides to the City any software licenses, the following provisions apply:

8.1 SOURCE CODE AVAILABILITY

- A. The Consultant must furnish the City, without charge, a single copy of the Source Code for the Software immediately upon the occurrence of any of the following:
1. The Consultant becomes insolvent; or
 2. The Consultant ceases to conduct business; or
 3. The Consultant makes a general assignment for the benefit of creditors; or
 4. A petition is filed in Bankruptcy by or against the Consultant.
- B. Use of the Source Code must be subject to the same restrictions as the Software itself.
- C. The City must have the right to modify the Source Code in any manner the City believes is appropriate, provided that the Source Code as modified must remain subject to the restrictions of Section 8.1(B).

8.2 PROPRIETARY PROTECTION

- A. The City agrees that if the Consultant informs the City that the Software is confidential information or is a trade secret property of the Consultant; the Software is disclosed on a confidential basis under this Contract and in accordance with the terms of this Contract.
- B. The Consultant must not use or disclose any knowledge, data or proprietary information relating to the City obtained in any manner.
- C. As permitted by Arizona Law, the parties agree that during the term of this Contract and of all Licenses granted under this Contract, and for a period of 7 years after termination of this Contract and of all licenses granted by this Contract, to hold each other's confidential information in confidence. The parties agree, unless required by government regulations or order of court, not to make each other's confidential information available in any form to any third party or to use each other's confidential information for any purposes other than the implementation of this Contract. However, if the Consultant's confidential information is requested to be divulged under the provisions of the Arizona Public Records Act, A.R.S., Title 39, the Consultant must reimburse the City for the full cost of the City's refusal to release the information, including the costs of litigation, the City's attorney fees, fines, penalties or assessments of the opposing party's attorney fees. Each party agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the provisions of this Contract.
- D. **NON-INFRINGEMENT**

The Consultant warrants that the Software provided to the City does not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary or property right of any person or entity.

In the event of a claim against the City asserting or involving such an allegation, the Consultant will defend, at the Consultant's expense, and will indemnify and hold harmless the City against any loss, cost, expense (including attorney fees) or liability arising out of the claim, whether or not the claim is successful. In the event an injunction or order is obtained against use of the Software, or if in the Consultant's opinion the Software is likely to become the subject of a claim of infringement, the Consultant will, at its option and its expense:

1. Procure for the City the right to continue using the Software; or
2. Replace or modify the software so that it becomes non-infringing (this modification or replacement must be functionally equivalent to the original); or
3. If neither 1 nor 2 is practicable, repurchase the Software on a depreciated basis utilizing a straight line 5 year period, commencing on the date of acceptance.

8.3 THIRD PARTY LICENSE

The Consultant must sublicense to the City any and all third party Software required in this Contract. The City reserves the right to accept or reject third party license terms. If the City rejects the terms of a third party license, it will be the Consultant's responsibility to negotiate acceptable terms or to supply Software from another source with terms acceptable to the City. The City's acceptance of the third party license terms will not be unreasonably withheld.

8.4 DATA CONFIDENTIALITY

- A. As used in this Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the Consultant in the performance of this Contract.
- B. The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Consultant in connection with the Consultant's performance of this Contract is confidential and proprietary information belonging to the City.
- C. The Consultant will not divulge data to any third party without first obtaining the written consent of the City. The Consultant will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided the Consultant has first given the required notice to the City:
1. Data, which was known to the Consultant before its performance under this Contract unless the data was acquired in connection with the Work performed for the City;
 2. Data which was acquired by the Consultant in its performance under this Contract and which was disclosed to the Consultant by a third party, who to the best of the Consultant's knowledge and belief, had the legal right to make disclosures and the Consultant is not otherwise required to hold the data in confidence; or
 3. Data, which is required to be disclosed by virtue of law, regulation, or court order to which the Consultant is subject.
- D. In the event the Consultant is required or requested to disclose data to a third party, or any other information to which the Consultant became privy as a result of any other contract with the City, the Consultant will first notify the City as required in this Article of the request or demand for the data. The Consultant will give the City sufficient facts so that the City can be given an opportunity to first give its consent or take any action the City may consider appropriate to protect the data or other information from disclosure.
- E. Unless prohibited by law, within 10 days after completion of services for a third party on real or personal property owned or leased by the City, the Consultant will promptly deliver, as stated in this Article, a copy of all data to the City. All data will continue to be subject to the confidentiality requirements of this Contract.
- F. The Consultant assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Article are violated by the Consultant, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Article will be considered to cause irreparable harm that justifies injunctive relief in court

The City of Scottsdale by its Mayor and City Clerk has subscribed their names this ____ day of _____, 201 .

CITY OF SCOTTSDALE

By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

CONSULTANT:
By: _____

Carolyn Jagger, City Clerk

By: _____

CITY OF SCOTTSDALE REVIEW:

CITY CONTRACT ADMINISTRATOR:

By: _____
James Flanagan
Purchasing Director

By: _____

By: _____
Edward M. Howard
Risk Management Director

APPROVED AS TO FORM:
Bruce Washburn, City Attorney

By: _____
John C. Shafer, III
Assistant City Attorney

SAMPLE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C. No. Ext):	Fax (A/C. No):
INSURED THIS MUST MATCH EXACTLY TO THE CONTRACTOR NAME AND INFORMATION AS LISTED IN THE CONTRACT OR SCOPE OF WORK.	E-MAIL ADDRESS:	
	PRODUCER CUSTOMER ID#:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER E:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INS LTR	TYPE OF INSURANCE	ADDL INSR	SUBR W/LD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				EACH OCCURENCE \$ DAMAGE TO RENTED PREMISES (Ea Occurrence) \$ MEDICAL EXP (Any One Person) \$ PERSONAL & ADV INSURY \$ GENERAL AGGREGATE \$ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per Accident) \$
	Umbrella Liab <input type="checkbox"/> OCC Excess Liab <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	<input type="checkbox"/>	<input type="checkbox"/>				EACH OCCURENCE \$ AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYER'S LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N <input type="checkbox"/> (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS BELOW.	N/A	<input type="checkbox"/>				WC STATUTORY LIMITS OTHER EL EACH ACCIDENT \$ EL DISEASE . POLICY LIMIT \$ EL DISEASE . EA EMPLOYEE \$

Description of Operations/Locations/Vehicles (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
City of Scottsdale, its representatives, agents and employees, is an Additional Insured under Commercial General Liability and Auto Liability. All cited insurance shall be primary coverage and waive rights of recovery (subrogation), including Workers Compensation, against City of Scottsdale. Insert Contract # or Purchase Order #

CERTIFICATE HOLDER City of Scottsdale Attn: (City of Scottsdale Buyer or Bid & Contract Staff Name) 9191 E. San Salvador Drive Scottsdale, AZ 85258	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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