

CITY OF CASA GRANDE, ARIZONA

REQUEST FOR QUALIFICATIONS

CITY OF CASA GRANDE MANAGED RECHARGE FACILITY

The City of Casa Grande requests Statements of Qualification (SOQ) from qualified consulting firms to do a Hydrologic Feasibility Study to evaluate the possible sites for the “Managed Recharge Facility”. In Addition, the selected firm needs to prepare Design/Construction plans for Recharge Facilities and Mass Earthwork.

Each response shall be in accordance with the RFQ instructions and scope of work package on file with the City Clerk at City Hall, 510 East Florence Boulevard, Casa Grande, Arizona, 85122, where copies can be obtained by visiting our web page: www.casagrandeaz.gov

All responses must be submitted by 1:00 pm City time on Wednesday, Nov. 04, 2009 to the City Clerk, Gloria Leija, 510 East Florence Boulevard, Casa Grande, Arizona 85122. The responses will be evaluated in accordance with Section five of the RFP instructions and scope of work package.

Responses must be addressed to:

**Gloria Leija, City Clerk
City of Casa Grande
510 E. Florence Boulevard
Casa Grande, Arizona 85122**

The envelope must be boldly marked:

**STATEMENT OF QUALIFICATIONS
CASA GRANDE MANAGED RECHARGE FACILITY**

The City of Casa Grande reserves the right to waive any informalities or irregularities in this Request of Qualifications, or to reject any or all responses; to be the sole judge of the suitability of the materials offered, and to award a contract for the furnishing of the services it deems to be in the best interest of the City.

James V. Thompson
City Manager



**REQUEST FOR STATEMENT OF QUALIFICATIONS
FOR
CASA GRANDE MANAGED RECHARGE FACILITY**

The City Of Casa Grande Public Works Department is soliciting Statements of Qualifications for professional engineering services relating to the Casa Grande Managed Recharge Facility.

City Project Number 2559

DUE DATE	04 Nov 09
TIME:	1:00 PM
LOCATION:	City Of Casa Grande Clerk's Office Building A 510 E. Florence Boulevard Casa Grande, AZ 85122

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SECTION 1. PROJECT DESCRIPTION

The City of Casa Grande is under construction for the Water Reclamation Facility (WRF) Phase 3 Expansion which expands the treatment plant capacity from 6 MGD to 12 MGD. With the growth of the City, the effluent of WRF is anticipated to rise accordingly. There is a need of utilizing this valuable resource for regional benefits and construct a “Managed Underground Storage Facility.”

PROJECT PURPOSE

The City of Casa Grande is accepting written statements of qualification to do a Hydrologic Feasibility Study to evaluate the possible sites for the “Managed Recharge Facility”. This study will outline an appropriate strategy for developing recharge sites with the adequate recharge capacity to provide surety for long term success of Recharge program. The selected firm should assist in permitting the “Managed Facility” through Arizona Department of Water Resources (ADWR).

Also, the selected firm needs to prepare Design/Construction plans for Recharge Facilities and Mass Earthwork.

PROJECT COORDINATION

The investigation study will be coordinated by the City of Casa Grande Public Works Department (CGPW).

SECTION 2. ABBREVIATED SCOPE OF WORK

PROJECT TASKS

The City of Casa Grande will provide the consultant with any available data.

Consultant services are to include but are not limited to:

- Prepare the Hydrologic Feasibility Report (minimum of one Draft and the Final).
- Preparation of Conceptual and Final Design/Construction Plans and specifications based on 30%, 90% and 100% Completion Level, preparations of preliminary and final construction cost estimates for Recharge Facilities and Mass Earthwork, and support for engineering during construction.
- Attendance at pre-application meeting(s) with ADWR and the ADEQ if necessary.
- Submit an impact analysis modeling proposal that is acceptable to ADWR.
- Prepare all application materials for an Underground Storage Facility (USF) permit utilizing the most-current USF Permit Application Guide document from ADWR.
- Prepare all materials for submission to ADEQ if an APP modification is required.

All electronic documents will be delivered on CD or DVD disk in a version confirmed usable by the City of Casa Grande IT department. An “as issued for bid” or “as published” copy in PDF format in a version confirmed usable by the City of Casa Grande IT department also delivered on CD or DVD. Deliver project documentation in Microsoft word, AutoCAD and pdf formats.

SECTION 3 – SUBMITTAL REQUIREMENTS

Provide six (6) hard copies and an electronic copy of your response. Limit your submittal to no more than 10 pages, excluding cover letter and dividers. Resumes for team members should be included in an appendix to the submittal document and will not count toward the 10 page maximum. The submittal shall be on 8 1/2 x 11 inch paper printed on one side only with no smaller than 12-point font. The name, address, email address and phone number of the key contact person shall be included in the cover letter. Submittals not complying with the format or page count limitation will result in the rejection of the submittal. Please number all pages and address the following items:

Please provide the following information in the sequence and format prescribed by this section. Supplemental materials providing additional information may be attached.

1. **Capabilities of Project Team** (Points - 25)

Provide a general description of the prime firm and subconsultants including the following information:

1. Office location, organizational structure and size of staff.
2. Percent of work to be performed by staff within the state of Arizona.
3. Breakdown of work between prime and subconsultants.
4. Authority to conduct business in Arizona and insurability.
5. Identify the team assigned to this project with:
 - Work background.
 - Availability.
 - Length of time with firm.
 - Work location of personnel during the course of the project.
 - Roles on this project identified with an organization chart.
 - Please state your firm’s ability to stamp submittals with either the RG or PE designation should ADWR require it.

2. **Past Performance** (Points - 25)

Describe recent USF permitting projects, including dates, which your project team has completed. Please be specific in detailing your experience. Knowledge of local geological features, groundwater conditions, climate, laws and regulations, construction methods and wastewater treatment plant operations is desired. Please state the software name of the program to be used in the modeling proposal.

Supply at least two owner references with contact names and phone numbers for each of the projects listed. Performance on cost control, quality of work and compliance with performance schedules will also be considered.

3. **Project Approach and Schedule** (Points - 25)

Incorporating the project features identified in the provisions, discuss the various strategies you would employ for a successful project.

1. Describe your firm's understanding of this project and the major technical issues related to this project.
2. Describe your firm's approach to deliver this project and any potential subsequent phases.
3. Briefly describe your firm's experience in preparing reports on options showing cost – benefit analysis and plans for selected design alternative and maintenance.

Provide a schedule showing how the project will be completed in a timely fashion. The project schedule is extremely important for the City. Provide a graphic project schedule that identifies significant issues/tasks, relationships between tasks and timeframes required to achieve the project objective in the most expeditious manner possible.

4. **Project Understanding** (Points - 25)

Please detail from your company's experience, specific activities you feel will aid in completion of each task (frequency of meetings with State agencies or with the City, the number and suggested length of report comment periods, etc.). Identify and discuss significant issues or tasks which you think will impact the successful completion of this project and how they will be resolved. Demonstrate an understanding of the connectivity of this study to other studies and projects in the vicinity of this area.

No reimbursement will be made by the City for any costs incurred prior to a formal notice to proceed. The City also reserves the right to reject any and all proposals and resolicit or cancel this procurement if deemed by the City to be in its best interest.

SECTION 4 -- EVALUATION CRITERIA

Evaluation will be based on professional capabilities, experience and the comprehensiveness of the above four line item submittals and their fulfillment of our requirements.

SECTION 5 – SUBMITTAL TIME AND PLACE

Responses to this request must be received at the City Clerk Office no later than Nov 04, 2009. Late responses will not be considered.

Submittals must be received at the City Clerks Office at the address listed below and marked as indicated no later than 1:00 pm local time on 04 Nov, 2009.

City Of Casa Grande
Clerks Office – City Hall A
510 E. Florence Boulevard
City Of Casa Grande, AZ 85122
Attn: Gloria Leija, City Clerk

Outside of package will be identified with:

Statement of Qualifications
City Of Casa Grande
Managed Recharge Facility

SECTION 6 – SELECTION CRITERIA

Selection of a firm to commence contract negotiations will be made through evaluation of the submitted proposals. Oral interviews may be requested of firms following evaluation of submittals.

The consultant will be selected through a qualifications-based selection process. Firms interested in providing consulting services must submit an RFQ that meets the criteria set forth. Information included in the RFQ response may be used to evaluate your firm as part of any criteria, regardless of where that information is found in the RFQ. Information obtained from the RFQ and from any other relevant source, including independent investigation by the City, may be used in the evaluation and selection process.

Please provide the following information in the sequence and format prescribed. Supplemental materials providing additional information may be attached.

SECTION 7 – SELECTION PROCESS

The City Of Casa Grande will utilize a two-step process for this selection.

1. An evaluation committee will review each Statement of Qualifications (SOQ) according to the Selection Criteria listed in section 6. A consultant and/or a short list of not more than three firms may be selected for further consideration.
2. If short listed, the short listed firms may be invited to participate in an interview and/or make a presentation.
3. The City will enter into negotiations for a contract with the highest qualified firm. If negotiations do not progress the City will negotiate with the next highest ranked firm.

CITY OF CASA GRANDE
REQUEST FOR STATEMENT OF QUALIFICATIONS
CITY OF CASA GRANDE MANAGED RECHARGE FACILITY

The City of Casa Grande requests Statements of Qualification (SOQ) from qualified consulting firms to do a Hydrologic Feasibility Study to evaluate the possible sites for the "Managed Recharge Facility". This study will outline an appropriate strategy for developing recharge sites with the adequate recharge capacity to provide surety for long term success of Recharge program. The selected firm should assist in permitting the "Managed Facility" through Arizona Department of Water Resources (ADWR). In Addition, the selected firm needs to prepare conceptual and final Design/Construction plans for Recharge Facilities and Mass Earthwork.

A detailed Request for Qualifications package may be obtained from the City by contacting the City Clerk at the location noted below.

Submittal Documents

Please provide six (6) hard copies and an electronic copy of your response. Limit your submittal to no more than 10 single-sided (8.5" x 11") pages or less, excluding cover letter and dividers. Resumes for team members should be included in an appendix to the submittal document and will not count toward the 10 page maximum. If desired, additional materials other information relevant to this project may be included at the end of the proposal in clearly marked appendices. The name, address, email address and phone number of the key contact person shall be included in the cover letter. Submittals not complying with the format or page count limitation will result in the rejection of the submittal. For the convenience of the review team, please state Items A through E in alphabetical order, followed by your response to each item. Submittals not complying with the format or page count limitation will result in the rejection of the submittal. Please number all pages and address the following items:

Review Process

Selection of firms who submit SOQ for this services contract will be made through an evaluation process based on the written proposals submitted and the Selection Criteria listed. Firms may be selected for possible oral interviews. The City reserves the right to dispense with oral interviews and proceed directly to negotiations with the most highly ranked firm.

For firms submitting proposals, the City requires a statement that the firms have read and understand all the elements laid out in the Services Contract.

The City will enter into negotiations for a contract with the highest qualified firm. If negotiations do not progress the City will negotiate with the next highest ranked firm.

This Request for Qualification does not commit the City to enter into any agreement, to pay any costs incurred for the preparation of the proposal/statement, for negotiations or for preparation of contract documents for this project.

At any time prior to the specified time and date for receipt of the submissions the firm may withdraw their SOQ.

The City Of Casa Grande expressly reserves the right to:

1. Waive any immaterial defect or formality.
2. Reject any or all proposals.
3. Reissue the Request of Qualifications.
4. Extend the time frame for the submission of Statements.
5. Request supplemental information from any or all applicants.

All materials and documents submitted in response to this Request for Qualifications will become the property of the City and will not be returned.

Submissions

Submittals must be received at the City Clerks Office at the address listed below and marked as indicated no later than 1:00 pm local time on Nov 04, 2009.

City of Casa Grande
Clerks Office – City Hall
Building A
510 E. Florence Boulevard
City of Casa Grande, AZ 85122

Outside of package will be identified with:

Statement of Qualifications
Casa Grande Managed Recharge Facility

Primary City of Casa Grande point of contacts for technical questions is:

Abdul Rashid, P. E., CFM
Neeraj Sinha, P.E.
Civil Engineer
City of Casa Grande
Public Works Department
3181 N. Lear Avenue
Casa Grande, AZ 85122
520-421-8625

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT is entered into this the _____ day of _____, 20____, by and between _____, an Arizona Corporation (hereinafter known as "Contractor"), whose address is _____, and the City of Casa Grande (hereinafter known as "City"), an Arizona municipal corporation, whose address is 510 East Florence Boulevard, Casa Grande, Arizona 85122.

The City engages the Contractor to perform professional services for a project known and described as the _____, hereinafter called the "Project".

1. Scope of Contractor's Services.

The contractor agrees to provide to the City services and any materials set forth in the Scope of Work requested by the City in its Requests for Proposal and as otherwise identified in Contractor's response (attached and incorporated herein as Exhibit "A") during the agreement period. No material, labor, or facilities will be furnished by the City, unless otherwise provided for in the Agreement. Timing is of the essence to the City.

2. Accounting and Payment for Contractor Services.

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B," in a maximum amount of \$ _____, including applicable taxes. Where Exhibit "B" requires payments by City after each task, payment shall be based upon billings supported, unless otherwise provided in Exhibit "B", by itemized documentation of units of work actually performed and amounts earned (including where appropriate, the actual number of days worked each month and total number of hours for the month), equipment or materials supplied or used, and the total dollar payment requested. Unless specifically stated in Exhibit "B" or approved in writing in advance by the City, the City will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the City shall, upon receipt of appropriate documentation, compensate the Contractor no more often than monthly through the City voucher system for the Contractor's service pursuant to the fee schedule set forth in Exhibit "B".

3. Assignment and Subcontracting.

Except for subcontractors identified by Contractor in Exhibit "B", no portion of this contract may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of the Contracting Officer. It will be the responsibility of the Contractor to ensure that any and all subcontractors comply with the terms and conditions of this agreement and that City of Casa Grande is named as express third-party beneficiary of such subcontracts with full rights as such.

4. Independent Contractor.

The Contractor's services shall be furnished by the Contractor as an independent Contractor and nothing contained herein shall be construed to create a relationship of employer-

employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent Contractor.

5. No Guarantee of Employment.

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the City at the present time or in the future.

6. Taxes.

The Contractor understands and acknowledges that the City will not withhold federal or state income taxes. Where required by state or federal law, the Contractor authorizes the City to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the City against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to, Business or Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the City does not hold title.

7. Regulations and Requirement.

This Agreement shall be subject to all laws, rules and regulations of the United States of America, the State of Arizona, and the City of Casa Grande.

8. Right to Review.

This contract may be subject to review by any federal or state auditor. The City or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the City. Such review may occur with reasonable notice, and may include, but is not limited to, on site inspection by City Agents or employees, inspection of all records or other materials which the City deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for five (5) years after contract termination in accordance with A.R.S. §35-214 and shall make them available for such review within the City of Casa Grande, State of Arizona, upon request.

9. Modifications.

Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.

10. Termination for Default.

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the contract, and at the City's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to the Termination for Public Convenience paragraph hereof.

11. Termination for Public Convenience.

The City may terminate the contract in whole or in part whenever the City determines, in its sole discretion, that such termination is in the best interests of the City. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provisions for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the City at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the City.

12. Equal Opportunity.

This Agreement, and the parties thereto, shall comply with the provisions of Arizona Executive Order 75-5 as amended by Arizona Executive Order 99-4 as they relate to equal opportunity.

13. Venue and Choice of Law.

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Arizona in and for the County of Pinal. This Agreement shall be governed by the laws of the State of Arizona.

14. Insurance.

14.1 Contractor Liability Insurance. Upon signing of the Agreement and so long as it shall remain in effect, contractor, at its cost and expense, shall purchase and maintain the insurance described in this subsection 14. The insurance shall be purchased and maintained in companies duly licensed or otherwise approved by the State of Arizona, with forms acceptable to the City of Casa Grande, and shall be primary with no right of contribution. The contractor's insurer shall have a minimum A.M. Best's rating of A-VIII. Use of alternative insurers requires prior approval for the City of Casa Grande.

The insurance coverages to be purchased and maintained are:

14.1.1 Workers' Compensation. Contractor shall provide workers' compensation insurance as required by state and federal laws having jurisdiction over Contractor's employees engaged in the performance of the Services within this Agreement.

14.1.2 General Liability. Contractor shall maintain a Commercial General Liability (Occurrence) policy that includes coverage for premises and operations, products and completed operations, contractual liability, broad form property damage, and personal injury liability. The policy shall have limits of not less than:

- \$1,000,000 for each occurrence of bodily injury and property damage; and
- \$1,000,000 for personal injury;

14.1.3 Automobile Liability. Contractor shall maintain an Automobile Liability policy with a combined single limit for bodily injury and property damage of not less than \$1,000,000 for each accident. The policy shall cover all owned, hired, and non-owned automobiles used in connection with the Agreement for the performance of Contractor's services.

14.1.4 Property Insurance. A policy or policies of fire and extended coverage property damage insurance covering the full insurable value of all tools and equipment used by contractor from time to time on the lands of City of Casa Grande pursuant to the Agreement, including mobile equipment. Contractor shall also require its agents, contractors, licensees and others performing the obligations, or exercising the rights, of Contractor under the Agreement to carry such property damage insurance. Such policy or policies shall cover the full insurable value of such tools and equipment.

14.1.5 Adjustment of Liability Limits. If the initial term of the Agreement shall exceed ten years or if the aggregate term of the Agreement, including any extension or renewal terms agreed to by the parties or provided for in the Agreement shall exceed ten years, on each tenth anniversary of the date of the Agreement, the liability limits provided for in sections 14.1.2 and 14.1.3 shall be increased by an amount proportional to the increase in the US consumer price index occurring since the date of the Agreement or the date of the last such increase as appropriate.

14.1.6 Professional Liability. The Contractor retained by the City to provide the engineering services required by the Agreement will maintain Professional Liability insurance covering errors and omissions arising out of the Services performed by the Contractor or any person employed by him, with a limit of not less than \$2,000,000 each claim and \$4,000,000 all claims. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of Services as evidenced by annual Certificates of Insurance.

14.2 Insurance Certificate. Contractor shall not exercise any of its rights under the Agreement until it delivers to City of Casa Grande's designated recipient certificates from contractor's insurers showing that the coverage required above has been obtained.

14.2.1 The insurance certificates must show City of Casa Grande, its subsidiaries, affiliates directors, officers, and employees as additional insured parties in respect of all liability coverage except workers' compensation and professional liability insurance. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

14.2.2 The insurance certificate shall provide on its face that the policies it represents will not be terminated, amended, or allowed to expire without 30 days prior written notice to City of Casa Grande.

14.2.3 Failure of City of Casa Grande to demand the insurance certificate or other evidence of full compliance with these insurance requirements or failure of City of Casa Grande to identify a deficiency from any certificate provided to it shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

14.3 Severability of Interests. The policies referenced in 14.1.2. and 14.1.3. shall contain a severability of interests clause, generally providing, "the insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's insurance."

14.4 Waiver of Subrogation. With the exception of Workers Compensation and Professional Liability Insurance, Contractor hereby waives any and all rights that it might have against City of Casa Grande, its employees, officers and directors, to recover all or part of any loss or damage insured or insurable by the insurance policies carried or required to be carried by it pursuant to the Contract Documents. Contractor shall require each of its agents, contractors, licensees and others performing the obligations, or exercising the rights, of Contractor under the Agreement to provide a similar waiver for City of Casa Grande's benefit.

14.5 Deductibles. Contractor may purchase the required insurance policies with deductibles which are reasonable in light of the contractor's financial condition; provided that any loss not covered due to the deductible will be paid by Contractor. Contractor shall also require its agents, contractors, licensees and others performing the obligations, or exercising the

rights, of contractor under the Agreement to carry such property damage insurance. Such policy or policies shall cover the full insurable value of such tools and equipment.

15. Withholding Payment.

In the event the Contractor has failed to perform any substantial obligation to be performed by the Contractor under this Agreement and said failure has not been cured within the times set forth in this Agreement, then the City may, upon written notice, withhold all monies due and payable to Contractor, without penalty, until such failure to perform is cured or otherwise adjudicated.

16. Future Non-Allocation of Funds.

If sufficient funds are not appropriated or allocated for payment under this contract for any future fiscal period, the City will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the City in the event this provision applies.

17. Protection of Licensee Data.

Contractor warrants that the Contractor's installation, maintenance, and upgrade of any software provided hereunder shall not result in the use or disclosure by Contractor of any information concerning a patient/client obtained by the City in providing service in violation of any State laws, Federal laws, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), and any federal regulations governing privacy, including, but not limited to, 45 CFR Section 160-164, as well as other applicable federal and state statutes and regulations.

18. Contractor Commitments, Warranties and Representations.

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to materially fulfill such a commitment shall result in a breach of this Contract.

19. Patent/Copyright Infringement.

Contractor will defend and indemnify the City from any claimed action, cause or demand brought against the City, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the City in any action. Such defense and payments are conditioned upon the following:

a. That Contractor shall be notified promptly in writing by City of any notice of such claim; and

b. Vendor shall have the right, hereunder, at its option and expense, to obtain for the City the right to continue using the information, in the event such claim of infringement is made, provided no reduction in performance or loss results to the City.

20. Disputes.

20.1 General. Differences between the Contractor and the City, arising under and by virtue of the Contract Documents shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions and decisions of the Contracting Officer, shall be final and conclusive.

20.2 Notice of Potential Claims. The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Contractor has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the Work performed, labor and material used, and all costs and additional time claimed to be additional.

20.3 Detailed Claim. The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before the final payment by the City, the Contractor has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of supporting documents evidencing the amount or the extension of time claimed to be due.

21. Ownership of Items Produced.

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with the performance of this Agreement shall be sole and absolute property of the City.

22. Conflict of Interest.

The Contractor agrees to promptly disclose any financial or economic interest in the Project property, or any property affected by the Project, existing prior to the execution of this Contract. Further, the Contractor agrees to promptly disclose any financial or economic interest with the Project property, or any property affected by the Project, if the Contractor gains such interest during the course of this Contract.

If the Contractor gains any financial or economic interest in the Project during the course of this Contract, this may be grounds for terminating this Contract at the sole discretion of the City.

The Contractor shall not engage the services on the Contract of any present or former City employee who was involved as a decision maker in the selection or approval processes, or who negotiated or approved billings or contract modifications for this Contract.

The Contractor agrees that it shall not perform services on this Project for the contractor, sub-contractor, or any supplier.

The Contractor shall not negotiate, contract, or make any agreement with the contractor, sub-contractor, or any supplier with regard to any of the work under this Project, or any services, equipment or facilities to be used on this Project.

This Agreement is subject to the cancellation provisions for conflicts of interest pursuant to A.R.S. §38-511.

23. Covenant Against Contingent Fees.

The Contractor affirms that he has not employed or retained any company or person, other than a bona fide employee working for the Contractor to solicit or secure this Contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this clause, the City may terminate this Contract without liability, or in its discretion may deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

24. Indemnification.

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees from and against all claims, damages, losses, and expenses (including but not limited to reasonable attorney's fees, court costs, and the costs of appellate proceedings), relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services the Contractor may be legally liable in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, officers, officials, and employees from and against all claims, damages, losses, and expenses that are attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of any person or property, including loss or use resulting therefrom, caused by any negligent acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Contract by Contractor or any employee of the Contractor, or any other person (not the City) for whose negligent acts, errors, mistakes, omissions, work, or services the Contractor may be legally

liable. The amount and type of insurance coverage requirement set for the herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

25. Confidentiality.

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the City or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the City Attorney, or an order entered by a court after having acquired jurisdiction over the City. Contractor shall immediately give to the City notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the City, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

26. Public Disclosure.

In the event of a public records request to for the Licensed Program or Licensed Documentation, the City shall promptly provide a copy of such request to Contractor so that it has at least 7 days from Contractor's receipt of such request in which to seek an order restraining the City from disclosing the Licensed Program and Documentation pursuant to such public records request. If Contractor does not obtain a restraining order within such period of time, the City may disclose the Licensed Program and Licensed Documentation pursuant to such public request as the City deems appropriate to comply with Arizona's Public Records Laws.

27. Notice.

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the department head of the department for whom services are rendered and to the City Attorney's Office. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

28. Severability.

If any term or condition of this contract or the application thereof to any person(s) or circumstance(s) is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

29. Waiver.

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

30. Survival.

The provisions of paragraphs, 4, 6, 8, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 24, 25, 26, 29, 33 and 34 and the provisions of any non-collusion affidavit, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

31. Discrimination.

Contractor **shall not** unlawfully discriminate against any employee, applicant for employment, recipient of services or programs, or applicant for services or programs, on the basis of race, creed, color, sex, age, marital status, national origin or the presence of any sensory, mental or physical handicap. Contractor shall comply with the Americans with Disabilities Act.

32. Entire Agreement.

This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

33. E-verify requirements.

To the extent applicable under A.R.S. § 41-4401, the Bidder and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Bidder's or subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by City. The Bidder agrees to insert language similar to this paragraph in all contracts in which they engage with subcontractors on this project to ensure that those subcontractors are meeting the requirements of the above-mentioned statutes. City retains the legal right to randomly inspect the papers and records of the Bidder and its subcontractors who work on the Agreement to ensure that the Bidder and its subcontractors are complying with the above-mentioned warranty. The Bidder and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by City. The Bidder and its subcontractors shall cooperate with City's random inspections including granting City entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

34. Compliance with A.R.S. §35-391.06 and 35-393.06

Contractor, and his/her firm, certifies that it does not have, nor will it for the duration of this contract have, scrutinized business operations in Sudan or Iran as defined in A.R.S. § 35-391.06 and 35-393.06.

35. City Contact

The Contact for the City shall be _____ .

