

CITY OF CASA GRANDE, ARIZONA

NOTICE OF BID

The City of Casa will receive sealed bids for the following:

EMERGENCY GENERATOR ROUTINE MAINTENANCE AND REPAIR SERVICES

Each bid shall be in accordance with the specifications and instructions on file with the City Clerk at City Hall, 510 East Florence Boulevard, Casa Grande, Arizona, 85122, where copies can be obtained by calling the City Clerk's Office (520) 421-8600, or a complete packet is available on the City's website: www.casagrandeaz.gov.

All bids must be submitted by **October 28, 2014 at 1:30 p.m.** City time to the City Clerk, Remilie S. Miller, 510 East Florence Boulevard, Casa Grande, Arizona 85122. The bid opening will take place on **October 28, 2014 at 1:30 p.m.** in the Main Conference Room (2nd Floor), 510 E. Florence Boulevard, Casa Grande.

A pre-bid mandatory meeting will be held on **Monday, October 13, 2014 at 9:00 a.m.** at the North Operations Center (NOC), 3181 N. Lear Avenue, Casa Grande, AZ 85122.

Bids must be addressed to:
Remilie S. Miller, City Clerk
City of Casa Grande
510 E. Florence Boulevard
Casa Grande, Arizona 85122

The envelope must be boldly marked:

BID ON EMERGENCY GENERATOR ROUTINE MAINTENANCE AND REPAIR SERVICES

BID OPENING: TUESDAY, OCTOBER 28, 2014 AT 1:30 P.M.

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

/s/James V. Thompson
City Manager

INFORMATION TO BIDDERS

EMERGENCY GENERATOR ROUTINE MAINTENANCE AND REPAIR SERVICE

I. SECURING BID DOCUMENTS

Specifications and other bid document forms are available on the City's website: www.casagrandeaz.gov or the City Clerk's Office:

Remilie S. Miller, MMC
City Clerk
City of Casa Grande
510 E. Florence Blvd.
Casa Grande, Arizona 85122
(520) 421-8600 Ext. 1110

II. ADDITIONAL INFORMATION

Nicholas Stalter
Facilities Maintenance Supervisor
City Of Casa Grande
3181 N. Lear Ave.
Casa Grande, Az 85122
(520) 421-8625

III. CONTENT OF BID

The Bid package should contain the following:

- Call for Bids Notice
- Information to Bidders
- General Information/Bids Specifications
- Bid Form
- Check List (if Applicable)
- Certification of Bid

IV. INTERPRETATION OF DOCUMENTS

If any person contemplating submitting a bid is in doubt as to the true meaning of any part of this Request for Bids, or finds discrepancies in or omissions from the specifications, the bidder may submit to the City Clerk, a written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the proposed documents will be made only by Addendum duly issued by the Department. All Addendums will be forwarded to the City Clerk's Office to be

included in the Original Bid Packet. The Department will not be responsible for any other explanation or interpretation of the Request for Bids.

V. MULTIPLE CONTRACT AWARDS

If the City Of Casa Grande deems it necessary we may award multiple contracts to two different bidders.

VI. ANY ADDENDUMS OR BULLETINS

Any addendums or bulletins issued by the Department during the time of bidding or forming a part of the documents provided to the bidder for the preparation of the bid shall be covered in the bid and shall be made part of the contract. ***No addendums will be issued five (5) days prior to the bid opening.***

VII. WITHDRAWL OF BIDS

Any bidder may withdraw his bid, either personally or by written request, at any time prior to the scheduled time for the opening of bids.

VIII. ECONOMY OF PREPARATION

Bids should be prepared simply and economically, providing a straightforward, concise description of the bidder' capabilities to satisfy the requirements of these guidelines. The bidder shall be responsible for costs incurred in the bid preparation and delivery.

IX. SCHEDULE

The following schedule is planned, but subject to change at the sole discretion of the City:

Call For Bid	September 29, 2014
Pre-Bid Mandatory Meeting North Operations Center (NOC), 3181 N. Lear Avenue, Casa Grande, AZ	October 13, 2014 at 9:00 a.m.
Bid Opening	October 28, 2014 at 1:30 p.m.
City Council	December 1, 2014
2 nd Reading City Council	December 15, 2014
Contractor Kickoff meeting	January 5, 2015
Start Work	January 19, 2015

X. EVALUATION PROCESS

Bids that are judged by the City to be unresponsive or materially incomplete will be immediately rejected.

Finalists will be selected from the remaining bidders.

The City will perform whatever research it deems necessary into the bidder's history, financial viability and references. The bidder shall cooperate with the **City Clerk's Office** by providing appropriate information.

XI. EVALUATION CRITERIA

The primary evaluation criteria shall be the overall benefit/cost as perceived by the Facilities Maintenance Supervisor, rather than cost only.

The **Facilities Maintenance Supervisor** shall consider many factors, including the following (which are not in any specific sequence):

- * Responsiveness to the needs of the Department
- * Bidder's qualifications
- * Quality of Product
- * Quoted price

XII. MULTIPLE BIDS

Bidders may submit multiple bids if they so desire. Such multiple bids will be evaluated separately on their own merits.

XIII. REQUIREMENTS

The City has established certain requirements as specified in the General Requirement/Bid Specifications. None of these requirements are designed to give any bidder an advantage or disadvantage in the bidding process. Bidders are encouraged to bid even if the bid does not meet the requirements as stated. However, the bidder must state specifically which requirements are not met, how the same function may be otherwise performed, and why this deviation should not be considered material. The City's determination that a deviation is not material does not excuse the bidder from full compliance with other specifications if he is awarded the contract.

XIV. METHOD OF PAYMENT

Bidder should submit billing statement to the attention of the Finance Department. When applicable the bidder should reference on the billing statement the purchase

order number or City contract number. The City of Casa Grande makes every effort to generate payment for claims within 30-days from initial request.

XV. DELIVERY OF PRODUCT/COMPLETION OF WORK

Upon receiving Notice to Proceed or Purchase Order Number, Bidder shall **provide services as specified in the bid specifications.**

XVI. EXECUTION OF AGREEMENT

Successful bidder will be required to enter into a formal agreement that is consistent with the bid package outlined within. The bidder to whom the Contract is awarded by the City shall within 15 days after notice of award and receipt of Agreement forms from the City, sign and deliver to the City all required copies. *(Sample of Agreement attached in bid packet – specifics may change to comply with bid specifications)*

XVII. MISCELLANEOUS INFORMATION

- A. All prices quoted will reflect the total to the City for the item/project/service and shall include all applicable taxes, and other charges.
- B. The City will not honor any invoices or claims, which are tendered sixty (60) days after the close of the City's fiscal year for work completed.
- C. The City is not responsible for any bidder's errors or omissions.
- D. All bids submitted to the City are to remain firm for a minimum period of sixty (60) days from the date the bids are officially opened.
- E. The successfully bid is not officially accepted until such time as the bidder receives written notice of acceptance from the City Clerk.
- F. If bidder conducts business inside the City Limits, then a business license number is required.
- G. Where bidder is a corporation or other type of legal entity, bids must be signed In the legal name of the entity followed by the name of the state of incorporation or place of formation, and the legal signature of an officer authorized to bind the entity to a contract.

BID SPECIFICATIONS

EMERGENCY GENERATOR ROUTINE MAINTENANCE AND REPAIR SERVICES

1. It is the intention of the City Of Casa Grande to obtain professional Emergency Generator Maintenance and Repair Services for all of the City Of Casa Grande Emergency Generators for the FY 14-15. The City Of Casa Grande will have the right and option to extend the term for four (4) additional one (1) year periods with the same terms and conditions. The City Of Casa Grande will also have the right and option to terminate the contract upon thirty (30) days written notice.
2. The City of Casa Grande has multiple generators that require regular and routine maintenance and needed repair service. It is the vendor's sole responsibility to attend the pre-bid conference and visibly inspect the generators in order to familiarize themselves with the brand, make and model prior to submitting a bid.
3. The generators to be included in this bid are owned by the City of Casa Grande and located at the following locations.
 - a. **Casa Grande Public Safety Facility**
373 E. Val Vista BLVD.
Casa Grande, Az 85122
 - b. **Casa Grande Fire Station 501**
119 E. Florence Blvd.
Casa Grande, Az 85122
 - c. **Casa Grande Fire Station 502**
1479 E. 9th Street
Casa Grande, Az 85122
 - d. **Casa Grande Fire Station 503**
3305 N. Piper Ave.
Casa Grande, Az 85122
 - e. **Casa Grande Fire Station 504**
1637 E. McCartney Road
Casa Grande, Az 85122
 - f. **Casa Grande City Hall B**
510 E Florence Blvd
Casa Grande, Az 85122
 - g. **Public Safety Communication center**
520 N. Marshall Street
Casa Grande, Az 85122

h. Casa Grande Waste Water Facility

1194 W. Kortsen Road
Casa Grande, Az 85122

4. Routine service calls to be done quarterly (4 times a year) for preventative maintenance and in order to ensure proper operation of generators.
5. Load bank testing to be done on an annual basis (1) this is to ensure proper operation during emergency situations.
6. Repairs made to each generator to ensure proper operation must be approved through the Facilities Maintenance Division Supervisor or designee.

BID RESPONSE FORMAT:

Service each generator **every quarter** of year beginning January 2015. The bid shall be submitted and should show the cost and description per visit for each generator for all preventative and routine maintenance service. The bid shall also include cost on a per-visit basis per generator for each of the possible extended four (4) years. A chart showing each generator and possible subsequent years will assist in this requirement. It is required that you complete and return the Bid Response Form.

Also required would be a price breakdown for repairs of the generators. This would be done in two ways: 1) cost per hour for personnel/ technician and 2) percentage over cost for parts and materials for repairs.

TERMINATION FOR DEFAULT:

The City Of Casa Grande reserves the right to enforce the performance of successful bids in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of agreement. The City reserves the right to terminate the agreement immediately in the event the successful bid fails to: 1) meet delivery schedules; or 2) otherwise performs in accordance with these specifications. Breach of contract or default authorizes the City to, among other things, award to another bid, purchase elsewhere and charge the full increase in cost and handling to the defaulting successful bid.

TERMS OF PAYMENT

Upon receipt of invoice, payment will be within 30 days. The invoice will have separate charges for each building and related cost for servicing that generator.

LIABILITY INSURANCE

Upon request, the successful bid shall furnish the City Of Casa Grande proof of General Liability insurance for personal injury, including death, and property damage with a minimum of \$1 million dollars per occurrence and \$2 million dollars aggregate, including coverage for advertising injury and products coverage. Bid shall also provide evidence of workers compensation insurance for all employees performing work on City property.

REFERENCES

A minimum of three (3) references from current commercial and/or governmental accounts are to be submitted with the bid. Names and phone numbers of contact person at each commercial and/or government account must also be included.

Additionally, the Better Business Bureau will be contacted for professional reference.

BID SUBMITTAL SCORING

Each bid submitted will be reviewed by Facilities Maintenance Staff. Once bids have been reviewed for completeness and references checked, Staff will rank the bids using a scoring matrix. The top bids will be recommended to City Council for approval.

(This section was meant to be left blank)

BID FORM

Generator to be serviced	Site Visit Made yes or no	Services per year	Cost per visit July 2014-June 2015	Cost per visit July 2015-June 2016	Cost per visit July 2016-June 2017	Cost per visit July 2017-June 2018	Cost per visit July 2018-June 2019	Total
Public Safety 373 E. Val Vista BLVD.	yes/no	4	\$	\$	\$	\$	\$	\$
Fire Station 501 119 E Florence Blvd.	yes/no	4	\$	\$	\$	\$	\$	\$
Fire Station 502 1479 E. 9th Street	yes/no	4	\$	\$	\$	\$	\$	\$
Fire Station 503 3305 N. Piper Ave.	yes/no	4	\$	\$	\$	\$	\$	\$
Fire Station 504 1637 E. McCartney Road	yes/no	4	\$	\$	\$	\$	\$	\$
City Hall Building B. 510 E. Florence Blvd.	yes/no	4	\$	\$	\$	\$	\$	\$
Communication Center 520 N. Marshall Street	yes/no	4	\$	\$	\$	\$	\$	\$
Waste Water Facility 1194 W. Kortsen Road.	yes/no	4	\$	\$	\$	\$	\$	\$
Grand Total Cost								\$

Service Repair Parts and Materials will be billed to the City Of Casa Grande on a cost plus basis.

The cost of all parts and material will be:

Cost Plus _____%

Grand Total Cost

Cost

Bid Price _____
Cost Plus _____
Applicable Tax _____
Net Bid Price _____

Total Price FOB Casa Grande _____

References – please fill in all spaces. Return page with bid.

Company Name:	
Contact:	Title:
Address:	Phone No:
Scope of work:	Length of service:
Company Name:	
Contact:	Title:
Address:	Phone No:
Scope of work:	Length of service:
Company Name:	
Contact:	Title:
Address:	Phone No:
Scope of work:	Length of service:

CERTIFICATION OF BID

FOR

EMERGENCY GENERATOR ROUTINE MAINTENANCE AND REPAIR SERVICES

Bidder hereby certifies by signing and submitting this bid, which includes Notice of Bids, Information to Bidder, Bid Specifications, Bid Form, Issued Addenda and Certification of Bid that they have read and fully understand, and will comply with said invitation for bids.

Corporate Name

Address

City, State, and Zip

Type of Entity

State of Incorporation

Phone Number

Casa Grande Business

License Number (if Applicable)

Signature of Authorized Officer

Print Name of Authorized Officer

SAMPLE CONTRACT FOR SERVICES

THIS CONTRACT is entered into this the _____ day of _____, 201____, by and between (hereinafter known as "Contractor"), a _____ authorized to do business in the state of Arizona, 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 services for a project known and described as "_____".

1. Scope of Contractor's Services.

The contractor agrees to provide services to the City for the performance of _____, consistent with the Scope of Work and in the timeframe identified as Exhibit "A" and incorporated herein by reference. No material, labor, or facilities will be furnished by the City, unless otherwise provided for in the Agreement.

2. Accounting and Payment for Contractor Services.

Payment to the Contractor for services rendered under this Agreement shall be a sum total of \$ _____, as set forth in Exhibit "B". Where Exhibit "B" requires payments by City on a monthly basis for the percentage of the work completed, 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 that are not part of the agreed upon reimbursable expenses. 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.

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 or without 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 an unimpaired limit of not less than \$1,000,000 each claim and \$2,000,000 all claims, or 10% for the construction budget, whichever is larger. 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. 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. 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. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

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 Contractors or subcontractors, in connection with the performance of this Agreement shall be the 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, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City of Casa Grande, its agents, officers, officials and employees from and against all allegations, demands, proceedings, actions, claims, damages, losses, expenses, judgments, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting, relating to, arising out of, or resulting from any acts, errors, mistakes, omissions, work or services of the Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of this Contract.

Contractor's duty to defend, indemnify and hold harmless the City of Casa Grande, its agents, officers, officials and employees shall arise in connection with any allegation, demand, proceeding, action, claim, damage, loss, expense or judgment that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor, any tier of Contractor's subcontractors or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable. The amount and type of insurance requirements set forth herein will not be construed as limiting the scope of the indemnity provisions of this Contract.

To the fullest extent permitted by law, the City agrees to indemnify and hold the Contractor harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the City's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the City is legally liable, and arising from the project that is the subject of this Agreement. The Contractor is not obligated to indemnify the City in any manner whatsoever for the City's own negligence.

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 the City 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, 27, 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.

To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor 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 ARIZ. REV. STAT. § 23-214(A). The Contractor’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 Contractor 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 Contractor and its subcontractors who work on the Agreement to ensure that the Contractor and its subcontractors are complying with the above-mentioned warranty. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by City. The Contractor 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.

Dated this the day of , 20__.

City of Casa Grande, an Arizona
municipal corporation.

By: _____

James V. Thompson,
City Manager

By: _____

Name: _____
Title: _____

