

**CITY OF CASA GRANDE, ARIZONA
REQUEST FOR STATEMENT OF QUALIFICATIONS**

FOR THE

POSITIVE DISPLACEMENT BLOWER REPLACEMENT PROJECT

The City of Casa Grande is seeking a qualified Contractor to provide for the replacement of existing positive displacement blower units, hereinafter referred to as “the Project.”

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 calling the City Clerk’s Office (520) 421-8600, or a complete packet is available on the City’s website: www.casagrandeaz.gov. All responses must be submitted by **3:00 p.m.** City time on **Friday, June 20, 2014** to the City Clerk at the address specified below.

Responses 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:

**STATEMENT OF QUALIFICATIONS FOR
POSITIVE DISPLACEMENT BLOWER REPLACEMENT PROJECT
DUE ON FRIDAY, JUNE 20, 2014 AT 3:00 P.M.**

The City of Casa Grande reserves the right to waive any informalities or irregularities in this Request for 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.

/s/James V. Thompson
City Manager



City of
Casa Grande

REQUEST FOR STATEMENT OF QUALIFICATIONS

FOR

**POSITIVE DISPLACEMENT BLOWER REPLACEMENT
PROJECT**

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SECTION 1: PROJECT DESCRIPTION

The City of Casa Grande is seeking a qualified Contractor to provide for the replacement of existing positive displacement blower units, hereinafter referred to as “the Project.

The Project is intended to provide for the replacement of at least one (1), and as many as four (4) positive-displacement rotary lobe blowers. The blowers will be installed in the blower building which is located at the City’s Water Reclamation Facility at 1194 W. Kortsen Rd. Casa Grande, AZ 85122. The Project may involve removal or modifications of existing bases which the original blowers were mounted on. Modifications to existing intake and discharge piping may also be required.

The Contractor shall be responsible for providing any design services which they believe may be required for execution of the project.

Cost of construction of the project is estimated to be \$200,000 dollars according to an Engineer’s Opinion of Probable Cost.

SECTION 2: SCOPE OF WORK

The selected Contractor shall be responsible for providing all required labor, equipment, materials, and services required to remove and replace the four (4) existing positive-displacement rotary lobe blowers.

The existing blower units consist of a skid-mounted packaged assembly. It is intended that this project utilize the existing components to the greatest extent possible. Each assembly consists of a belt-driven blower unit, intake filter, discharge silencer, and appurtenant piping. It is intended that for each assembly the Contractor shall relocate the motor to provide a close-coupled configuration to drive the blower unit. The contractor shall provide a new blower for each assembly, as well as any appurtenant piping or materials as may be needed to complete the installation.

SECTION 3: PRE-SUBMITTAL CONFERENCE

A pre-submittal conference shall be held at the project site. ATTENDANCE OF THIS MEETING IS MANDATORY for Contractors that wish to submit for this project.

Date: June 6, 2014
Time: 10:00 AM
Location: City of Casa Grande Water Reclamation Facility
1194 W. Kortsen Road
Casa Grande, AZ 85122

SECTION 4: SUBMITTAL ELEMENTS

The Contractor will be selected through a qualifications-based selection process. Firms interested in providing these services must submit a Statement of Qualifications (SOQ) that meets the criteria set forth in this section. Information included in the SOQ response will be used to evaluate your firm as part of any criteria, regardless of where that information is found in the SOQ. Information obtained from the SOQ and from any other relevant source, including independent investigation by the City, may be used in the evaluation and selection process. Further details of submittal requirements are contained in Section 6 of this solicitation.

To be considered, each SOQ must address each of the following items:

1. Experience and Qualification of Firm (25 Points Possible)

- 1.1. Provide a general description of the firm and/or team that is proposing to provide required services.
- 1.2. Provide the following information:
 - 1.2.1. List the Arizona professional and contractor licenses held by the firm/team. Provide the license number and explain if held by an individual or the firm.
 - 1.2.2. Identify any contract or subcontract held by the firm or officers of the firm, which has been terminated within the last 5 years. Identify any claims arising from a contract, which resulted in litigation or arbitration within the last 3 years. Briefly describe the circumstances and the outcomes.
 - 1.2.3. If selected as a finalist for this project, you will be required to provide a statement from an A- or better surety company describing the Company's bonding capacity.
- 1.3. Identify at least 3 comparable projects to the Positive Displacement Blower Replacement Project in which the firm/team provided similar services.

For each project identified, provide the following:

 - 1.3.1. Description of the project

- 1.3.2. Role of the firm (General Contractor, subcontractor, vendor, etc.)
- 1.3.3. Original contracted construction cost and final construction cost for each Project
- 1.3.4. Construction dates
- 1.3.5. Project owner
- 1.3.6. Reference information (two current names with telephone numbers per project)

2. Experience of key personnel to be assigned to this project (25 Points Possible)

- 2.1. Identify all key personnel for the proposed project team. For each key person identified, list their length of time with the firm and at least 2 comparable projects in which they have played a primary role. If a project selected for a key person is the same as one selected for the firm, provide just the project name and the role of the key person. For other projects provide the following:
 - 2.1.1. Description of project
 - 2.1.2. Role of the person
 - 2.1.3. Original contracted construction cost and final construction cost for each Project
 - 2.1.4. Construction dates
 - 2.1.5. Project owner
 - 2.1.6. Reference information (two current names with telephone numbers per project)

3. Approach to Performing the Required Services (30 Points Possible)

- 3.1. Discuss the major issues such as: construction sequencing, providing safe work conditions and early procurement of long-lead items that your team has identified on this project and how you intend to address those issues.
- 3.2. Describe your firm's project management approach and team organization during design and construction phase services to address major issues. Describe systems used for planning, scheduling, cost estimating and managing construction. Briefly

describe the firm's experience in quality control, dispute resolution, and safety management.

4. Principal office location and local participation (10 Points Possible)

The City desires strong local participation in this project. Describe your firm's approach to maximize utilization of local resources, to include as a minimum, local suppliers, equipment providers, subcontractors, and laborers. Identify the location of the firm's principal office and the home office location of key staff on this project. Identify local (i.e. presently living in or relocating to the Valley) vs. non-local staffing of your team, and the percent of their work expected to be done locally.

5. Subcontractor Selection Plan (10 Points Possible)

Interested Contractors shall include in their submittal a proposed subcontractor selection plan. The proposed subcontractor selection plan must select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone.

SECTION 5: SELECTION PROCESS

A selection committee shall be formed including representatives of the City of Casa Grande, and a Licensed Contractor. This Committee will read, review and evaluate each submittal independently based on the evaluation criteria. A point formula system will be used to evaluate the submittals. A "final list" will be constructed based on the score of the initial evaluations. The City may, however, call firms to clarify information received in the submittal. A short list of no less than three, and no more than five, firms will be generated from submittals received. Firms on the final list shall be ranked, and the City will enter into negotiations with the highest ranking firm.

Upon completion of the selection process and the identification of the best qualified firm, the City shall enter into negotiations with the selected team and execute a contract following completion of negotiation of fees and any contract terms for Council consideration. A sample of the form of Contract to be executed is included as Appendix "B" in this solicitation. If the City is unable to successfully negotiate a contract with the best-qualified firm, the City may then negotiate with the second or third most qualified until a contract is reached or may terminate the selection process.

SECTION 6: PROPOSED SCHEDULE OF EVENTS

The following is the anticipated schedule of events for the solicitation and award of a Contract for this project. The City, however, reserves the right to alter these timelines as necessary in the best interest of the City and to accommodate scheduling difficulties relating to interviews or Council selection of the Contractor. All times refer to Local Time, as kept by the City Clerk.

<u>Event</u>	<u>Description</u>	<u>Date</u>
1.	Request for Qualifications Release	5-27-2014
2.	MANDATORY PRE-SUBMITTAL CONFERENCE	6-6-2014
3.	Submittal Deadline	6-20-2014
4.	Notify final-list selected construction managers	6-27-2014
5.	Notify selected construction manager	6-27-2014
6.	Anticipated Council approval of Contract	8-4-2014
7.	Anticipated Notice to Proceed	9-3-2014
8.	Anticipated Substantial Completion	1-1-2015

SECTION 7: GENERAL TERMS, CONDITIONS, AND INSTRUCTIONS

1. Definition of Terms Used in These Instructions

As used in these instructions, the following terms have the following meaning:

- A. "Attachments" means all items required of the Submitter as a part of the submittal.
- B. "Days" means calendar days unless otherwise specified.
- C. "Exhibits" means all items attached to the solicitation.
- D. "Submittal" means bid, submittal, quotation, and qualifications.
- E. "Submitter" means a vendor or provider who responds to any type of solicitation.
- F. "Contracts Manager" means the person duly authorized to enter into and administer contracts and make written determinations

with respect to the contract or his or her designee. For the City Of Casa Grande, that shall mean the Project Manager.

G. "Solicitation" means an invitation for bids (IFB), a request for submittals (RFP), a request for quotations (RFQ) or a request for qualifications (RFQ).

2. Preparation of Submittal

- A. Copies of Submittal. To be considered responsive, one original and seven copies of a submittal must be submitted in a sealed envelope or box with the RFQ Description (Construction Manager - Water Reclamation Facility Phase III Expansion) and the submitter's name and address clearly indicated on the package by the deadline. The submittal must bear the original signature of an authorized representative of the submitter on the acknowledgement provided.
- B. Forms: No Facsimile or Telegraphic Submittals. A submittal shall be made either on the forms provided in this solicitation or their substantial equivalent. Any substitute document for the forms provided in this solicitation shall be legible and contain the same information requested on the form. A facsimile, telegraphic, or mailgram submittal shall be rejected.
- C. Typed or Ink Corrections. The submittal must be typed or in ink. Erasures, interlineations or other modifications in the submittal must be initialed in ink by the person signing the submittal. Modifications shall not be permitted after submittals have been opened except as otherwise provided under applicable law.
- D. Duty to Examine. It is the responsibility of each submitter to examine the entire solicitation, seek clarification in writing, and check its submittal for accuracy before submitting the submittal. Lack of care in preparing a submittal shall not be grounds for withdrawing the submittal after the submittal due date and time nor shall it give rise to any contract claim.
- E. Amendments. Each solicitation amendment, if any, shall be signed with an original signature by the person signing the submittal, and shall be submitted no later than the submittal due date and time. Failure to return a signed copy of a material solicitation amendment may result in rejection of the submittal.
- F. Submittal Amendment or Withdrawal. A submittal may not be amended or withdrawn after the submittal due date and time except as otherwise provided under the City's Procurement Code or other applicable law.
- G. Public Record. Under applicable law, all submittals submitted and opened are public records and must be retained by the City of Casa

Grande. Submittals shall be open to public inspection after contract award, except for such submittals deemed to be confidential by the City Casa Grande. If a submitter believes that information in its submittal should remain confidential, it shall stamp as confidential that information and submit a statement with its submittal detailing the reasons that information should not be disclosed. The City of Casa Grande shall make a determination pursuant to the City of Casa Grande's Procurement Code and the Public Records laws of the State of Arizona.

- H. Exceptions to Terms and Conditions. A submittal that takes exception to a material requirement of any part of the solicitation, including a material term and condition of any proposed contract, may be rejected. Exceptions to the submittal documents shall be clearly set forth in an attachment to the submittal.
- I. Release of Project Information. The City shall provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to release information to the public must receive prior written approval from the City.
- J. Non-compliant Submittals to be Rejected. Submitters are advised that failure to comply with the following criteria will be grounds for disqualification and will be strictly enforced:
 - Receipt of submittal by the specified cut-off date and time.
 - Failure to deposit the submittal in the appropriate location.

These failures will result in disqualification and no action of the City, including late acceptance by the City Clerk, shall act to waive or otherwise affect the disqualification.

- K. City Rights. The City of Casa Grande reserves the right to reject any or all Submittals, and except as set forth in subsection (j) above, to waive any informality or irregularity in any Submittal received, to be the sole judge of the merits of the respective Submittals received, and to cancel any solicitation if deemed to be in the interest of the City to do so.

3. Inquiries

- A. Solicitation Contact Person; Other Contact Prohibited. Any inquiry related to a solicitation shall be directed solely to the City of Casa Grande Project Manager identified in this proposal. The submitter shall not contact or direct inquires concerning this solicitation to any other employee unless the solicitation specifically identifies a person other than the Contracts Manager as a contact. All firms interested in this project (including the firm's employees, representatives, agents, lobbyists, attorneys, and subconsultants)

will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the evaluation panel, the City Manager, Deputy City Manager, Department Heads and other staff. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public and to protect the integrity of the selection process. The Contract Manager/Contact Person for this Solicitation shall be:

Terrence S. McKeon, PE
3181 N. Lear Ave.
Casa Grande, AZ 85122
tmckeon@casagrandeaz.gov

- B. Submission of Inquiries. All inquiries are to be submitted via email ONLY. Each inquiry shall clearly refer to this solicitation in the subject line of the email. A list of all inquiries received, and responses by the city, shall be generated and be made available to all interested parties via posting on the City's website seven (7) days prior to the submittal deadline.
- C. Timeliness. Any inquiry should be submitted at least seven (7) days prior to the submittal due date and time. Failure to do so may result in the inquiry not being answered.
- D. No Right to Rely on Verbal Responses. Any inquiry that raises material issues and results in changes to the solicitation shall be answered solely through a written solicitation amendment. A submitter may not rely on verbal responses to its inquiries.

4. Submittal Acceptance Period

By submitting a proposal pursuant to this solicitation, the submitter agrees that it shall hold its submittal open for the number of days from the submittal due date that is stated in the solicitation. If the solicitation does not specifically state a number of days for the submittal acceptance, the number of days shall be one-hundred twenty (120).

5. Cost of Submittal Preparation

The City of Casa Grande shall not reimburse any submitter the cost of responding to a solicitation.

6. Certifications, Disclosure, and Disqualification

- A. Non-collusion, Employment, and Services. By signing the Submittal form, or other official contract form, the submitter certifies that:
- a. did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its submittal; and
 - b. It does not discriminate against any employee, applicant for employment, or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state, and local laws and executive orders.
- B. Disclosure. If the Design Consultant and Construction Contractor, business, or person submitting this submittal has previously been debarred, suspended, or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state, or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Submitter must fully explain the circumstances relating to the preclusion or proposed preclusion in the submittal. If awarded, the submitter must include a letter with its submittal setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above must be provided.
- C. Disqualification. The submittal of a submitter who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall be rejected.

7. Incorporation by Reference

The Uniform General Terms and Conditions are incorporated by reference into this solicitation and are available from the Contracts Manager.

8. Award of Contract

- A. Number or Types of Awards. Where applicable, the City of Casa Grande reserves the right to make multiple awards or to award a contract by individual line items, by a group of line items, or to make an aggregate award, whichever is deemed most advantageous to the City of Casa Grande. If the Contracts Manager determines that an aggregate award to one submitter is

not in the City of Casa Grande's interest, "all or none" submittals shall be rejected.

- B. Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in a submittal shall be deducted from the submittal for the purposes of evaluating that price.
- C. Contract Inception. A submittal does not constitute a contract nor does it confer any rights on the submitter to the award of a contract. A contract is not created until the submittal is accepted in writing by the Casa Grande City Council and executed by the authorized signature of the City Manager and the Submitter.

9. Protests

Pursuant to Section 3.04.170 of the Casa Grande City Code, all protests shall be in writing and be filed with the Purchasing Officer of the City of Casa Grande. To be considered timely, a protest of a solicitation any protest must be filed within three (3) days after the protester knows or should have known the basis of the protest. A protest shall include:

- A. The name, address, and telephone number of the protester;
- B. The signature of the protester or its representative;
- C. Identification of the purchasing agency and the solicitation or contract number;
- D. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- E. The form of relief requested.

10. Solicitation Order of Precedence

In the event of a conflict in the provisions of this solicitation, the following shall prevail in the order set forth below:

- A. Solicitation;
- B. Special Terms and Conditions, if any;
- C. Uniform General Terms and Conditions;
- D. Specifications;
- E. Exhibits;
- F. Special Instructions to Submitters; and

G. Uniform Instructions to Submitters.

11. Persons With Disabilities

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Contracts Manager. Requests should be made as early as possible to allow time to arrange the accommodation. A person requiring special accommodations may contact the solicitation contact person responsible for this procurement as identified on the first page of this solicitation.

SUBMITTAL DEADLINE FOR STATEMENT OF QUALIFICATIONS

Submittals must be delivered in a sealed package bearing the title of the solicitation. Packages must be delivered prior to the submittal deadline to the Address listed below; any submittal package received after the deadline shall not be considered and will be discarded.

Submittal address and deadline information:

TITLE:	POSITIVE DISPLACEMENT BLOWER REPLACEMENT PROJECT		
SUBMITTAL DUE DATE:	JUNE 20, 2014	TIME:	3:00 PM
SUBMIT TO:	Remilie S. Miller, City Clerk City of Casa Grande 510 E. Florence Boulevard Casa Grande, AZ 85122		

SUBMITTAL ACKNOWLEDGMENT

To the City of Casa Grande:

The undersigned hereby submittals and agrees to furnish the materials in compliance with all terms, conditions, specifications and amendments in the Solicitation. Signature also certifies understanding and compliance with the City of Casa Grande’s Standard Terms and Conditions.

COMPANY NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

PHONE: _____ FAX: _____

CONTACT PERSON: _____

AUTHORIZED COMPANY SIGNATURE _____

THIS FORM MUST BE SIGNED AND RETURNED WITH SUBMITTAL

Authorization for Release of Performance Information and Waiver

I, _____, the undersigned, on behalf of _____ (this company), being duly authorized to do so, do hereby consent and authorize all those companies and government entities listed in my Submittal to the City of Casa Grande, and any other government entity for whom this company has performed pre-construction and/or construction services, to disclose and release to the City of Casa Grande, or its representatives, information, records and opinions concerning this company's performance. The purpose of this disclosure is to provide references and background material to the City of Casa Grande. This company hereby waives any claim it may have against the City of Casa Grande or any company or entity providing information to the City of Casa Grande by reason of any information being disclosed or opinions provided regarding the actions or performance of this company.

This authorization shall be effective for one year, and a copy of this authorization shall be as valid and effective as the original.

Dated: _____

By: _____

Title: _____

APPENDIX “A”

SAMPLE CONTRACT FORM

CONTRACT FOR SERVICES

THIS CONTRACT is entered into this the ____ day of _____, 2013, by and between _____ (hereinafter known as "Contractor"), an Arizona Corporation 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 the "CITY OF CASA GRANDE POSITIVE DISPLACEMENT BLOWER REPLACEMENT PROJECT."

1. Scope of Contractor's Services.

The contractor agrees to provide services to the City to complete the gravity sewer cleaning project pursuant to the Scope of Work attached hereto as Exhibit "A", which is incorporated herein by reference. Contractor also agrees to complete the services in Exhibit "A" within the timeframe required therein. 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 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 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.

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, 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.

To the extent applicable under A.R.S. § 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 A.R.S. § 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.

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.

EXHIBIT “A”—SCOPE OF SERVICES

SAMPLE

EXHIBIT “B”— PAYMENT SCHEDULE

SAMPLE