



CITY OF AVONDALE  
Finance and Budget Department  
11465 West Civic Center Drive Suite 250  
Avondale, AZ 85323-6807  
Phone: 623-333-2047  
Fax: 623-333-0200

**INFORMAL REQUEST FOR PROPOSAL  
FOR  
VACANT LOT PROJECT PLANNING, DEVELOPMENT AND MANAGEMENT  
NFS 21-058 (Extended)(with Amendment No. 1)**

**All responses due by 08/19/2021, 3:00 P.M., Local Time, Phoenix, Arizona. Please email your response to Jill Lin at [jlin@avondaleaz.gov](mailto:jlin@avondaleaz.gov). Please see page 7 for the non-mandatory pre-submittal meeting information.**

The City of Avondale (the “City”) Neighborhood and Family Service Department (“NFS”) is seeking proposals from qualified firms to provide planning, development and project management services for the City’s vacant lot redevelopment project (“Project”) funded by Neighborhood Stabilization Program (“NSP”) program income funds via U.S. Department of Housing and Urban Development (“HUD”).

The City currently owns four vacant lots that were purchased, and existing structures subsequently demolished with HUD funds. The City is seeking planning services to develop a request for proposal which will provide for the development and construction of new housing units on the vacant lots for low to moderate income households and overall project management for the duration of the project. The properties are as follows:

| Assessor’s Parcel Number | Physical Address  | Acreage   |
|--------------------------|-------------------|-----------|
| 500-17-081               | 305 E. Hill Drive | .33425143 |
| 500-17-083               | 309 E. Hill Drive | .16399544 |
| 500-17-100               | 320 E. Hill Drive | .16065067 |
| 500-53-068               | 516 E. Dee Street | .2114899  |

**Section I – Project Information**

- 1.1. The Purpose: The purpose of this Informal Request for Proposal (“RFP”) is to invite qualified project management consulting firms to submit qualifications and fee proposals to provide planning, development oversight, and project management services in accordance with Federal regulations pursuant to NSP and HOME funds. The selected proposer (“Consultant”) will report to the Housing & Community Development Manager and authorized City Staff.
- 1.2. Scope of Work: Specific services, although not all-inclusive, to be performed are broken down into two phases and each phase can be separately bid.
  - 1.2.1. Phase 1 – includes the drafting of a scope of work and related requirements for a formal request for proposals for the development of grant funded vacant lots. Related tasks shall include:

- 1.2.1.1. Research pertaining funding regulations to ensure all requirements are met for the entirety of the project and considerations made for the development of the request for proposals. Provide input, review and feedback for a complete request for proposal package, evaluation review process and pertaining contract development.
- 1.2.1.2. Establish a compliance plan and document all relevant citations. Work with any HUD representatives in collaboration with City staff as may be needed to address project specific concerns for guidance.
- 1.2.1.3. Establish procedures for conducting any pertaining environmental reviews in accordance with HUD requirements in order to inform design and alleviate foreseeable construction delays.
- 1.2.1.4. Determine contract types that are most advantageous and appropriate, including all regulation references for the delivery of the redevelopment project. Finalize said documents as directed by City.
- 1.2.1.5. Determine all local, state and federal laws that are pertinent to the development project to avoid any project, construction or related service delays and to ensure consistency with all established policies including but not limited to the following:
  - 1.2.1.5.1. Consolidated Plan
  - 1.2.1.5.2. Annual Action Plan
  - 1.2.1.5.3. 2030 General Plan
  - 1.2.1.5.4. Historic Avondale Design and Development Guidelines
  - 1.2.1.5.5. Old Town Revitalization Plan
  - 1.2.1.5.6. Artspace Needs Analysis
  - 1.2.1.5.7. Avondale Specific Area Plan of Old Town, Cashion, Las Ligas/Rio Vista
  - 1.2.1.5.8. Avondale Public Art Master Plan
- 1.2.1.6. Provide any recommended amendments to the Consolidated Plan and Annual Action Plan to ensure the most advantageous and timely expenditure of federal funds as may be needed. Draft any related documents necessary for any publication, presentation or public comment review processes.
- 1.2.1.7. Develop any 1) relevant standards as related to architectural drawings, energy efficiencies, developer experience and buyer contribution; 2) determine family sizes (desired mix of number of bedrooms); 3) develop eligibility and minimum contribution of homebuyer; 4) determine loan terms for down payment assistance and purchase subsidy; 5) establish standards for developer fees, builder profits and related professional fees; 6) develop the selection criteria and review process for the request for proposals; and 7) and other related items as needed.
- 1.2.1.8. Recommend project progress milestones relative to the construction project and inspections, including energy inspections. Work with City staff for any procurements to contract for any additional services required during this project.

- 1.2.1.9. Report to Housing & Community Development Manager and authorized City Staff as needed. Recommend schedule of meetings appropriate to various aspects of project or with consideration towards key project milestones.
- 1.2.1.10. Provide routine reports on the status of the project and attend any public meetings, prepare and conduct any presentations that may be needed, and any related outreach activities in the community.
- 1.2.2. Phase 2 – Redevelopment of vacant lot project oversight, which includes oversight of the contract(s) and daily project management for the development of grant funded vacant lots. Related tasks shall include:
  - 1.2.2.1. Project monitoring.
  - 1.2.2.2. Section 3 monitoring as may be needed
  - 1.2.2.3. Required reporting for the duration of the project
  - 1.2.2.4. Coordination with other City departments as may be needed for plan review, permit issuance, public safety concerns during construction, and close out of any and all necessary documents or reports.
  - 1.2.2.5. Prepare and provide any presentations or summary updates to City staff, board or commissions.
  - 1.2.2.6. Respond to questions from the public about the project as may be needed.
  - 1.2.2.7. Coordinate a project website, video or other like materials that may be necessary.
  - 1.2.2.8. Review of contractors pay requests if needed.
  - 1.2.2.9. Prepare and provide for assistance with any post project completion reporting as may be required by HUD.
  - 1.2.2.10. Prepare and ensure proper recordation any property liens that may be necessary in conjunction with the project funding, if not already included in
- 1.3. Minimum Qualifications:
  - 1.3.1. The proposer must be able to establish and maintain an active registration in System for Award Management (SAM) to be eligible for participation in Federal assistance programs or activities.
  - 1.3.2. The successful proposer must have the background, experience and skills in addressing section 1.2.
  - 1.3.3. The successful proposer must have demonstrated knowledge in HUD housing regulations, general planning, design and oversight of construction, labor standard requirements, HUD section 3 requirements and all related regulations.
- 1.4. Federal Clauses:
  - 1.4.1. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319,

12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

1.4.2. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

1.5. Waiver; Rejection; Reissuance: Notwithstanding any other provision of this informal Request for Proposal, the City expressly reserves the right to: (i) waive any immaterial defect or informality, (ii) reject any or all proposals submitted or portions thereof and (iii) reissue an informal Request for Proposal.

1.6. Invoice Submission and Required Format:

1.6.1. Consultant shall email invoices along with activity statements monthly to Avondale Account Payable at [accountspayable@avondaleaz.gov](mailto:accountspayable@avondaleaz.gov) and the project manager(s).

1.6.2. All invoices must include a statement. At a minimum, the statement must show each qualified activity, date, number of hours, and the contract fee charged (see sample below)

| Activity Statement (Sample) |                    |   |       |             | 10/01/2021 through 10/30/2021 |
|-----------------------------|--------------------|---|-------|-------------|-------------------------------|
| Date:                       | Work Order Number: | Qualified Activity  | Hours | Hourly Rate | Subtotal                      |
| 10/02/2021                  | NFS 21-038         | Phase 1 – development of the request for proposal                     | 3     | \$70.00     | \$210.00                      |
| 10/05/2021                  | NFS 21-038         | Phase 1 - Environmental reviews in accordance with HUD                | 1     | \$70.00     | \$70.00                       |
| 10/15/2021                  | NFS 21-040         | Phase 2 - Project monitoring  | 2     | \$70.00     | \$140.00                      |
| 10/20/2021                  | NFS 21-040         | Phase 2 – Prepared required reporting for the duration of the project | 2     | \$70.00     | \$140.00                      |
| Grand Total:                |                    |   |       |             | \$560.00                      |

## **Section II – Instructions and Conditions**

2.1. By submitting a proposal to this RFP, the Consultant certifies that in addition to reviewing and understanding the submittal requirements, it has reviewed the Exhibit A - Sample Professional Service Agreement. If consultant desires to submit for both phases 1 and 2, experience should detail both aspects of work required and the fee proposal shall include pricing for both phases.

2.2. Quantities: The City reserves the right to adjust the quantities as necessary to meet its needs.

2.3. Preparation/Submission:

2.3.1. Experience of Firm:

2.3.1.1. A brief history and summary of your firm's qualifications, a statement of your firm's policy regarding equal employment opportunity and affirmative action. (11 pt, Arial or Times New Roman; document size 8 1/2" x 11", maximum 2 pages).

2.3.1.2. References (names, addresses, emails and telephone numbers) from at least three (3) federally funded projects of a similar nature, completed within the last five (5) years, with a brief description of the project.

2.3.1.3. For each reference, list the general tasks pertaining to the Vacant Lot Development Program your firm performed.

2.3.1.4. A complete resume of all the key positions that will be involved in this project.

2.3.1.5. Project Approach: Overall approach for coordinating and managing all work activities to meet program requirements and schedules. (11 pt, Arial or Times New Roman; document size 8 1/2" x 11", maximum 7 pages)

2.4. All proposals must contain the quoting firm's name and be signed by an authorized agent, officer or employee.

2.5. Evaluation: The City will evaluate the proposal in accordance with the criteria below. The evaluation of the responses will be on combination of price proposal and qualifications or expertise with respect to labor compliance monitoring and regulations and shall be within the sole judgment and discretion of the Selection Committee. Consultant may be required to submit additional information to clarify their proposals at any time throughout the evaluation process.

2.5.1. Experience of Firm (maximum 40 points)

2.5.1.1. Evaluation will include relevant experience and qualifications, key personnel, record of past performance (including references), quality of recently completed projects, including adherence to schedules, deadlines and budgets and experience with similar projects.

2.5.2. Project Approach (maximum 60 points)

2.5.2.1. Describe the Consultant's approach to performing the required Services in the Scope of Work described in the section 1.2 and its approach to program management and project planning development, including its perspective and experience on partnering, customer service, quality control, scheduling, staff and coordinating with the City's representatives.

2.5.2.2. Reference (name, address, email and telephone number) from at least three but no more than five federally funded projects of a similar nature, completed within the last five years, with a brief description of the project and the product.

2.5.2.3. A complete resume of all the key positions that will be involved in this project.

2.6. The City will enter into negotiations with the highest ranking Firm for each phase. If the City is unsuccessful in negotiating an Agreement with the highest-ranked Firm, the City may then negotiate with the second, then third, highest-ranked Firm until an Agreement is executed. The City reserves the right to terminate the selection process at any time..

**2.7. Email the completed package including all documents listed under section 2.3 and page 7 of this RFP to Jill Lin, Senior Buy at [jlin@avondaleaz.gov](mailto:jlin@avondaleaz.gov).**

2.8. Upon request, Consultant shall provide the Services in accordance with a safety plan that is compliant with Occupational Safety and Health Administration ("OSHA"), American National Standards Institute and National Institute for Occupational Safety and Health standards. If, in the Consultant's sole determination, the Services to be provided do not require a safety plan, Consultant shall notify the City, in writing, describing the reasons a safety plan is unnecessary. The City reserves the right to request a safety plan following such notification.

2.9. If you need additional information or have questions please contact Jill Lin by email [jlin@avondaleaz.gov](mailto:jlin@avondaleaz.gov) or Marsha Chavez or by email [mchavez@avondaleaz.gov](mailto:mchavez@avondaleaz.gov)

**Section III –Proposal:**

3.1. All responses shall be considered firm for a period of 90 calendar days, commencing the day following the date of the request for proposal due date. Any responses specifying any time less than 90 calendar days shall be deemed non-responsive.

#### Section IV – Execution and Submission

By executing this document and submitting a proposal to the City of Avondale, the authorized agent agrees (i) he/she has read the City's Standard Terms and Conditions, dated March 16, 2020, as set forth on the City of Avondale website (<https://www.avondaleaz.gov/government/departments/finance-budget/standard-terms>), which are incorporated into and become a part of the company's proposal offer as if set forth fully herein and (ii) the company shall be bound by the Standard Terms and Conditions, dated March 16, 2020. By signing below the company is offering to provide the services set forth in Exhibit A and upon written acceptance of the company's offer by the City, it will have entered into a binding agreement. The offer shall be considered held open for 90 days from the quotes due date set forth above.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Email Address: \_\_\_\_\_ Telephone No. \_\_\_\_\_

**Proposals for amounts exceeding \$50,000 will not be authorized and will require a formal procurement process.**

#### **Pre-Submittal Zoom Meeting: August 10, 2021 3:00 PM**

Join Zoom Meeting

<https://avondaleaz.zoom.us/j/83246631656?from=addon>

Meeting ID: 832 4663 1656

One tap mobile

+13462487799,,83246631656# US (Houston)

+17207072699,,83246631656# US (Denver)

Dial by your location

+1 346 248 7799 US (Houston)

+1 720 707 2699 US (Denver)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Washington DC)

Meeting ID: 832 4663 1656

Find your local number: <https://avondaleaz.zoom.us/u/kEptMEuV>

EXHIBIT A  
TO  
INFORMAL REQUEST FOR PROPOSAL  
FOR  
VACANT LOT PROJECT PLANNING, DEVELOPMENT AND MANAGEMENT  
NFS 21-058

[PROFESSIONAL SERVICE AGREEMENT]

(See following page(s).)



**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND**

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THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2021, between the City of Avondale, an Arizona municipal corporation (the "City"), and \_\_\_\_\_, a(n) \_\_\_\_\_ (the "Consultant").

RECITALS

A. The City has received HOME investment partnership funds ("HOME Funds") under Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, Public Law 101-625.

A. Title 1 of the Housing and Community Development Act of 1974, as amended, established a Community Development Block Grant ("CDBG") program for the purpose of (i) developing viable urban communities by providing decent housing and a suitable living environment, (ii) expanding economic opportunities and (iii) preventing and/or eliminating conditions of slum and blight, principally for persons of low and moderate income.

B. Title III of the Housing and Economic Recovery Act of 2008, established a Neighborhood Stabilization Program ("NSP") for the purpose of providing emergency assistance to stabilize communities with high rates of abandoned and foreclosed homes, and to assist households whose annual incomes are up to 120 percent of the area median income. The City delivered programming that has generated program income which can be utilized for further affordable housing projects.

B. The City issued an Informal Request for Proposals, NFS 21-058 VACANT LOT PROJECT PLANNING, DEVELOPMENT AND MANAGEMENT (the "RFP"), a copy of which is on file in the City's Finance Office and incorporated herein by reference, seeking proposals from vendors for First-Time Homebuyer Assistance Program (the "Services").

C. The Consultant responded to the RFP by submitting a proposal (the "Proposal"), attached hereto as Exhibit A and incorporated herein by reference, and the City desires to enter into an Agreement with the Consultant for the Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Consultant hereby agree as follows:

1. Term of Agreement.

1.1. Initial Term. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until \_\_\_\_\_, 2022 (the “Initial Term”), unless terminated as otherwise provided in this Agreement.

1.2. Renewal Terms. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a “Renewal Term”) if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of this Agreement, the Consultant requests, in writing, to extend this Agreement for an additional one-year term and (iii) the City approves the additional one-year term in writing (including any price adjustments approved as part of this Agreement), as evidenced by the City Manager’s signature thereon, which approval may be withheld by the City for any reason. The Consultant’s failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Consultant, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

1.3. Non-Default. By requesting extension for a Renewal Term as set forth above, or by consenting to a Renewal Term in any manner, Consultant shall be deemed to affirmatively assert that (i) the City is not currently in default, nor has been in default at any time prior to the Renewal Term, under any of the terms or conditions of the Agreement and (ii) any and all Consultant claims, known and unknown, relating to the Agreement and existing on or before the commencement date of the Renewal Term are forever waived.

2. Scope of Work. Consultant shall provide the Services as set forth in the Scope of Work attached hereto as Exhibit B and incorporated herein by reference.

3. Compensation. The City shall pay Consultant an amount not to exceed \$50,000.00 each year for the Services at the rates set forth in the Fee Proposal attached hereto as Exhibit C and incorporated herein by reference.

4. Payments. The City shall pay the Consultant monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

5. Safety Plan. Consultant shall provide the Services in accordance with a safety plan that is compliant with Occupational Safety and Health Administration (“OSHA”), American National Standards Institute and National Institute for Occupational Safety and Health standards. If, in the Consultant’s sole determination, the Services to be provided do not require a safety plan,

Consultant shall notify the City, in writing, describing the reasons a safety plan is unnecessary. The City reserves the right to request a safety plan following such notification.

6. Ownership of Documents . All documents, including any intellectual property rights thereto, prepared and submitted to the City pursuant to this Agreement shall be the property of the City.

7. Consultant Personnel. Consultant shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Consultant agrees to assign specific individuals to key positions. If deemed qualified, the Consultant is encouraged to hire City residents to fill vacant positions at all levels. Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Consultant shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel possessing substantially equal ability and qualifications.

8. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the City at reasonable times during Consultant's performance. The Consultant shall provide and maintain a self-inspection system that is acceptable to the City.

9. Licenses; Materials. Consultant shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Consultant. The City has no obligation to provide Consultant, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The City has no obligation to provide tools, equipment or material to Consultant.

10. Performance Warranty. Consultant warrants that the Services rendered will conform to the requirements of this Agreement and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

11. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Consultant, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

12. Insurance.

12.1. General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

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

C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

E. Primary Insurance. Consultant's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Consultant shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Consultant shall execute written agreements with its subcontractors containing the indemnification provisions set forth above and insurance requirements set forth herein protecting the City and Consultant. Consultant shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Consultant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Consultant's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFP number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Consultant’s insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Consultant under this Agreement.

(4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

K. Endorsements. Consultant shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Section.

L. Bonding and Insurance. The Consultant shall comply with the insurance requirements of 41 CFR 105-72.401.

M. Grantor Recognition. The Consultant shall ensure recognition of the role of the grantor agency in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Consultant will include reference to the support provided herein in all publications made possible with funds available under this Agreement.

## 12.2. Required Insurance Coverage.

A. Commercial General Liability. Consultant shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for

claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Consultant engages in any professional services or work in any way related to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

D. Workers' Compensation Insurance. If Consultant employs anyone who is required by law to be covered by workers' compensation insurance, Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

12.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 days' prior written notice to the City.

13. Termination; Cancellation.

13.1. For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Consultant of written notice

by the City. Upon termination for convenience, Consultant shall be paid for all undisputed services performed to the termination date.

13.2. For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

13.3. Due to Work Stoppage. This Agreement may be terminated by the City upon 30 days' written notice to Consultant in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

13.4. Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

13.5. Gratuities. The City may, by written notice to the Consultant, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Consultant an amount equal to 150% of the gratuity.

13.6. Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds



were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Consultant informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Consultant hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this section.

14. Miscellaneous.

14.1. Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Consultant acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Consultant, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Consultant, its employees or subcontractors. The Consultant, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Consultant meets the requirements of its agreed Scope of Work as set forth in Section 2 above and Exhibit B. Consultant is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Consultant do not intend to nor will they combine business operations under this Agreement.

14.2. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

14.3. Laws and Regulations. Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future City and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future OSHA standards.

14.4. Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Consultant.

14.5. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

14.6. Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

14.7. Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

14.8. Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Consultant without prior, written permission of the City, signed by the City Manager. Any attempted assignment or delegation by Consultant in violation of this provision shall be a breach of this Agreement by Consultant.

14.9. Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the prior, written approval of the City. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Consultant.

14.10. Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

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

14.12. Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

14.13. Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Consultant any amounts Consultant owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Consultant any amounts Consultant owes to the City for delinquent fees, transaction privilege use taxes and property taxes, including any interest or penalties.

14.14. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Avondale  
11465 West Civic Center Drive  
Avondale, Arizona 85323  
Attn: Charles A. Montoya, City Manager

With copies to: City of Avondale  
11465 West Civic Center Drive  
Avondale, Arizona 85323  
Attn: Procurement Officer

City of Avondale  
11465 West Civic Center Drive  
Avondale, Arizona 85323  
Attn: City Attorney

If to Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above

governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.15. Confidentiality of Records. The Consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Consultant's duties under this Agreement. Persons requesting such information should be referred to the City. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under this Agreement.

14.16. Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 14.17 below, Consultant's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Consultant and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Consultant's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Consultant's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 14.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, Consultant and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Consultant pursuant to this Agreement. Consultant and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Consultant or its subcontractors reasonable advance notice of intended audits. Consultant shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

14.17. E-Verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Consultant and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Consultant's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

14.18. Israel. For Contracts in excess of One Hundred Thousand (\$100,000) Dollars, Consultant certifies that it is not currently engaged in, and agrees for the

duration of this Agreement that it will not engage in a “boycott,” as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

14.19. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any amendments, the Scope of Work, any City-approved Purchase Order, the Fee Proposal, the RFP and the Consultant’s Proposal, the documents shall govern in the order listed herein. If the Agreement is renewed pursuant to Subsection 1.2 above and such renewal includes any conflicting terms, other than price, those terms will be null and void.

14.20. Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

14.21. Cooperative Purchasing. Specific eligible political subdivisions and nonprofit educational or public health institutions (“Eligible Procurement Unit(s)”) are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

14.22. The Consultant must have a financial management system that complies with 41 CFR 105-72-301(b)(1)-(7).

14.23. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

14.24. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names

14.25. Documentation and Record-Keeping.

A. Records to be Maintained. The Consultant shall maintain all records required by the federal regulations specified in 24 CFR 92.508, which are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

(1) Program records as set forth in 24 CFR 92.508(a)(2).

(2) Project records as set forth in 24 CFR 92.508(a)(3).

(3) Financial records as set forth in 24 CFR 92.508(a)(5).

92.508(a)(6).

(4) Records concerning compliance with other federal requirements as set forth in 24 CFR 92.508(a)(7).

(5) Records documenting compliance with environmental review regulations as required by 24 CFR Part 58.

B. Retention. The Consultant shall retain all written and electronic records pertinent to expenditures incurred under this Agreement for a period of six years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for five years after final disposition of such property. Records for any displaced person must be kept for five years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

C. Close-Outs. The Consultant's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), submitting final close-out reports to the City and determining the custodianship of records.

D. Audits and Inspections. All Consultant's records with respect to any matters covered by this Agreement shall be made available to the City, its designees or the federal government, at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Consultant within 30 days after receipt by the Consultant. Failure of the Consultant to

comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Consultant hereby agrees to have an annual agency audit conducted in accordance with City policy concerning Consultant audits and, as applicable to 29 CFR Part 99.

14.26. Reporting and Payment Procedures.

A. Consultant Payment Procedures. The City will pay to the Consultant funds available under this Agreement based upon information submitted by the Consultant and consistent with an approved budget and City policy concerning payments. Payments will be made for eligible expenses actually paid by the Consultant (reimbursement).

14.27. Procurement.

A. Compliance. The Consultant shall comply with City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

B. OMB Standards. The Consultant shall procure all materials, property, or services in accordance with the requirements of 2 CFR Part 105-72, and Procurement Standards set forth in 24 CFR 92.505 and 24 CFR 84.40-84.46.

C. Travel. The Consultant shall obtain written approval from the City for any travel outside the metropolitan area with funds provided under this Agreement.

14.28. Relocation, Real Property Acquisition and One-For-One Housing Replacement.

Use of HOME funds subjects the City and the Consultant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24.

14.28.1. Reasonable Actions. The City must ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of a project assisted with HOME funds. For down payment and closing cost programs, the City must inform the seller of property, in writing, that the prospective homebuyer does not have the power of eminent domain and, therefore, will not acquire the property if negotiations fail to result in an amicable agreement. The seller must also be informed, in writing by the Agency, of the estimate of the fair market value of the property.

14.28.2. Relocation Assistance. If the property being considered by the prospective homebuyer is tenant-occupied, the tenant must be provided relocation assistance. That assistance includes advisory services, certain notices, moving expenses, and replacement housing assistance. Replacement housing assistance consists of either rental assistance or down payment assistance if the tenant wishes to become a homeowner. (24 CFR 92.353, 49 CFR 24.101)

14.28.3. Risk of Displacement. In order to reduce the risk of displacement from the City's program, the Consultant agrees to require that assisted units be vacant at least 30-days prior from the date of contract. The Consultant further agrees that it will obtain written notification from the seller that the property has been vacant for 30 days prior to the execution of the purchase contract, and that the seller is entering into a voluntary sale agreement

14.29. Personnel and Participant Conditions.

14.29.1. Civil Rights

A. Compliance. The Consultant agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended (the Fair Housing Act), Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 as amended by Executive Order 12259, Executive Order 11246 as amended by Executive Order 11375, 11478 and 12086 and, if applicable, Section 104(b) and Section 109 of Title I of Housing and Community Development Act of 1974 as amended.

B. Nondiscrimination. The Consultant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, nation origin, sex, disability or other handicap, age, or marital/familial status. The Consultant will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

C. Land Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 92.350 and 24 CFR 92.351. In regard to sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Consultant shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or



occupancy of such land, or in any improvements erected or to be erected thereon, and providing that the City and the United States are beneficiaries of the deed or lease entitled to enforce such covenants. The Consultant, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

D. Section 504. The Consultant agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1974, which prohibits discrimination against the handicapped in any federally assisted program. The City shall provide the Consultant with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

#### 14.29.2. Affirmative Action

A. Plan. The Consultant agrees that it shall be committed to carry out an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.

B. Women and Minority Owned Business Enterprises. The Consultant shall use its best efforts to afford minority and women owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement and will document these efforts to the City. As used in this Agreement, the term "minority and women owned business enterprise" means a business at least 51 percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Consultant may rely on written representation by businesses regarding their status as minority and women owned business enterprises in lieu of an independent investigation.

C. Access to Records. The Consultant shall furnish and cause each of its own contractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

D. Notifications. The Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understandings, a notice, to be provided by the agency's contracting officer, advising the labor union or worker's representative of the Consultant's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. EEO/AA Statement. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that it is an Equal Opportunity or Affirmative Action employer.

F. Subcontracting Provisions. The Consultant will include the provisions of subsections 16.1, Civil Rights and 16.2, Affirmative Action, in every subcontract or purchase orders, specifically or by reference, so that such provisions will be binding upon each of its Consultants or subcontracts.

#### 14.29.3. Employment Restrictions

A. Prohibited Activity. The Consultant is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.

B. Labor Standards. The Consultant agrees to comply with the applicable requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, the Copeland “Anti-Kickback” Act, the Contract Work Hours and Safety Standards Act and all applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Services may be subject to the Davis-Bacon Act, the Copeland “Anti-Kickback” Act and the Contract Work Hours and Safety Standards Act depending upon the size of the Home. Davis-Bacon wages do not apply to single-family home rehabilitation, but if the property contains 12 or more units, the Consultant will be required to pay its contractors Davis-Bacon wages. Likewise, the Contract Work Hours and Safety Standards Act does not apply to single-family home rehabilitation, but it applies for residential property containing not less than eight units. It is anticipated that federal prevailing wage rates, including the Copeland “Anti-Kickback” Act, will not be required for the Services. If necessitated by the requirements of the Services, the current wage rates will be provided in the Quotation packages and the Consultant agrees to comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeyworkers; provided, that if wage rates higher than those required under the regulations are imposed by state or local laws, nothing hereunder is intended to relieve the Consultant of its obligation, if any, to require payment of the higher wage. If applicable, the Consultant shall maintain documentation which demonstrates compliance with this subsection. The Consultant will cause or require to be inserted in full, in all contracts subject to such regulations, provisions meeting the requirements of this subsection.

C. “Section 3” Clause.

(1) Compliance. Compliance with the provisions of Section 3 of the Housing and Community Development Act of 1968, as amended, 12 U.S.C.

1701, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the federal financial assistance provided under this Agreement and binding upon the City, the Consultant and any of the Consultant’s Consultants and subcontractors. Failure to fulfill these requirements shall subject the City, the Consultant and any of the Consultant’s Consultants and subcontractors, their successors and assigns, to those sanctions specified by this Agreement through which federal assistance is provided. The Consultant certifies and agrees that no contractual or other disability exist which would prevent compliance with these requirements. The Consultant further agrees to comply with these Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section

3 of the Housing and Community Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to low and very low-income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low and very low-income persons residing in the metropolitan area in which the project is located.”

The Consultant further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation, housing construction, or other public construction project are given to low and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to low and very low- income persons within the service area of the project or neighborhood in which the project is located, and to low and very low-income participants in other HUD programs, and award contracts for work undertaken in connection to housing rehabilitation, housing construction, or other public construction projects are given to business concerns that provide economic opportunities for low and very low-income persons residing within the metropolitan area in which CDBG funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low and very low-income residents within the service area or neighborhood in which the project is located, and to low and very low-income

participants in other HUD programs. The Consultant certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements.

(2) Notifications. The Consultant agrees to send to each labor organization or representative of worker with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this "Section 3" Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(3) Subcontracts. The Consultant will include the "Section 3" Clause set forth above in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Consultant will not subcontract

with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not enter any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

#### 14.29.4. Conduct.

A. Subcontracts. In addition to the requirements of subsection 13.9, the following provisions shall apply:

(1) Monitoring. The Consultant will monitor all subcontracted services on a regular basis to ensure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions to correct areas of noncompliance.

(2) Content. The Consultant shall cause all the provisions of this Agreement in its entirety to be incorporated into and made a part of any subcontract executed in the performance of this Agreement.

(3) Selection Process. The Consultant shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

B. Hatch Act. The Consultant agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of the Title V United States Code.

C. Conflict of Interest. The Consultant agrees to abide by the provisions of 24 CFR 92.356 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Consultant further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Consultant hereunder. These conflicts of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City, or any designated public agencies or Consultants which are receiving funds under the HOME Program.

D. Lobbying. The Consultant hereby certifies that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) It will require that the entire language of subsection 18.4(d)(4), Lobby Certification, be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Consultants shall certify and disclose accordingly.

(4) Lobby Certification. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

E. Copyright. If this Agreement results in any copyrightable materials or inventions, the City reserves the right to royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

F. Religious Organization. The Consultant agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 92.257.

14.30. Environmental Conditions.

14.30.1 Air and Water. The Consultant agrees to comply with the following requirements insofar as they apply to the performance of this Agreement: (A) Clean Air Act, 42 U.S.C., 7401, et seq., (B) Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder, (C) Executive Order 11738, providing for the Administration of the Clean Air Act and the federal Water Pollution Control Act and (D) Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50, as amended.

14.30.2 Flood Disaster Protection. In accordance with the requirements of the Flood Disaster Protection Act of 1973, the Consultant shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

14.30.3 Lead-Based Paint. The Consultant agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to the Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and HUD Lead-Based Paint Regulations at 24 CFR 570.608, 24 CFR Part 35 and 29 CFR Part 1926, as amended. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. Consultant shall comply with any state and local laws or regulations governing environmental hazards and their remediation. Obligations under these regulations include, but are not limited to, the following:

A. Lead Content. Consultant shall not use or subcontract to a contractor who uses lead-based paint having more than 6/100 of 1% lead content by weight in the performance of this Agreement.

B. Protection of Workers. Consultant shall protect its workers disturbing lead painted surfaces, including, but not limited to the following:

(1) Contact the Inspector. Consultant shall contact the inspector for the Owner and City before disturbing any surfaces painted with lead paint to document the content of lead on all painted surfaces to be disturbed.

(2) Air Quality Monitoring. Consultant shall conduct air quality monitoring when appropriate for the type of activity to determine the level of worker protection required by OSHA. If air quality monitoring results exceed 30 ug/cu. For an eight-hour period, then worker blood testing and monitoring requirements provided in OSHA shall apply.

(3) Protective Equipment. Consultant shall provide personal protective equipment, including a respirator program, as is appropriate to the type of job as required by OSHA.

(4) Containment. Consultant shall provide proper containment of the work site and clean the work site not less than daily to contain lead dust.

(5) Facilities. Consultant shall make proper facilities available for worker hygiene when entering or exiting a work area.

(6) Signage. Consultant shall provide for appropriate signage indicating the presence of a lead hazard when conducting work activities.

(7) Cleaning. Consultant shall ensure that specialized cleaning of containment areas is complete before reoccupancy by the occupant of the house. For activities that remove identified lead hazards, the Consultant shall ensure that specialized cleaning is adequate to meet clearance standards adopted by HUD and local or state Departments of Health.

C. Removal of Paint. Consultant shall not use the following methods to remove paint that is, or may be, lead-based paint.

(1) Open flame burning or torching.

(2) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.

(3) Abrasive blasting or sandblasting without HEPA local exhaust control.

(4) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.

(5) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 ft. of electric outlets, or when treating defective paint spots totaling no more than 2 sq. ft. in one interior room or space, or totaling no more than 20 sq. ft. on exterior surfaces.

(6) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with the regulations of the Consumer Product Safety Commission at 16 CFR 1500.3 and/or other hazardous chemical in accordance with OSHA regulations at 29 CFR 1910.1200 or 1926.59, as applicable to the work.

14.30.4 Asbestos. The Consultant agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to OSHA regulations at 29 CFR Part 1926, as amended, and EPA regulations. Consultant shall comply with any state and local laws or regulations governing environmental hazards and their remediation. Obligations under these regulations include, but are not limited to, the following:

A. Abatement. If asbestos are identified during the initial inspection, Consultant shall not begin the Services until all abatement has occurred. Abatement contractors must be certified.

B. Asbestos Free Materials. The project is to be constructed by the Consultant with asbestos free materials. The Consultant shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Consultant or any of its subcontractors or agents, the Consultant shall be liable for all costs related to the abatement of such asbestos and damages or claims against the City notwithstanding any statute of limitations or other legal bar to any claim by the City.

14.30.5 Historic Preservation. The Consultant agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on the Federal, state or local historic property list.

[SIGNATURES ON FOLLOWING PAGES]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

**“City”**

CITY OF AVONDALE,  
an Arizona municipal corporation

\_\_\_\_\_  
Charles A. Montoya, City Manager

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

ATTEST:

\_\_\_\_\_  
Marcella Carrillo, City Clerk

**“Consultant”**

\_\_\_\_\_,  
a(n) \_\_\_\_\_

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

Name:\_\_\_\_\_

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

SAMPLE PROFESSIONAL AGREEMENT

EXHIBIT A  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND

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[Consultant's Proposal]

See following pages.

SAMPLE PROFESSIONAL AGREEMENT

EXHIBIT B  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND

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[Scope of Work]

See following page(s).

EXHIBIT C  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND

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[Fee Proposal]

See following page.