

**REQUEST FOR
STATEMENTS OF QUALIFICATIONS**

City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323

SOLICITATION INFORMATION AND SELECTION SCHEDULE

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| Solicitation Number: | RFQ PW 20-049 |
| Solicitation Title: | Request for Statement of Qualification for Water System Professional Engineering Services |
| Release Date: | May 13, 2020 |
| Advertisement Date: | May 13 and May 20, 2020 SW Business Gazette May 14, 2020 AZ Business Gazette |
| NON-MANDATORY Pre-Submittal Conference: | May 27, 2020 2:00 P.M. (local time, Phoenix, Arizona) Please see Vendor Registry for detail |
| Final Date for Inquiries: | Jun. 3, 2020 3:00 P.M. (local time, Phoenix, Arizona) |
| SOQ Due Date and Time: | Jun. 10, 2020 5:00 P.M. (local time, Phoenix, Arizona) |
| Interview: | Jul. 8, 2020 |
| Letters to Final Listed Firms | Jul. 9, 2020 |
| Anticipated Agreement Start Date: | Jul. 29, 2020 |
| Procurement Officer: | Jill Lin, Senior Buyer jlin@avondaleaz.gov |

* The City may elect to shortlist all responsive submittal and may proceed with conducting oral interview(s) with the Vendor(s) which the Evaluation Committee deems to warrant further consideration.

** The City of Avondale reserves the right to amend the solicitation schedule as necessary.

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SECTION A

PART I. RFQ PROCESS; AWARD OF AGREEMENT

1.1 Purpose; Scope of Work. The City of Avondale (the “City”) is issuing this Request For Qualifications (this “RFQ”) seeking statements of qualifications (“SOQ”) from qualified, licensed firms (“Vendors”) interested in providing professional services for professional engineering services for City’s Water Systems (the “Services”), as more particularly described in the Scope of Work attached to the sample Professional Services Agreement as Article 1. In accordance with the City’s Procurement Code, the City will accept sealed SOQ for the Services specified in the Scope of Work in the sample Professional Services Agreement.

1.2 Preparation/Submission of SOQ. Vendors are invited to participate in the competitive selection process for the Services outlined in this RFQ. Responding parties shall review their SOQ submissions to ensure the following requirements are met.

A. Irregular or Non-responsive SOQ. The City may consider as “irregular” or “non-responsive” and reject any SOQ not prepared and submitted in accordance with this RFQ or any SOQ lacking sufficient information to enable the City to make a reasonable determination of compliance to the minimum qualifications. Unauthorized conditions, limitations, or provisions may be cause for rejection. An SOQ may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the City, any of the following are true:

- (1) Vendor does not meet the minimum required skill, experience or requirements to perform or provide the Service.
- (2) Vendor has a past record of failing to fully perform or fulfill contractual obligations.
- (3) Vendor cannot demonstrate financial stability.
- (4) Vendor’s SOQ contains false, inaccurate or misleading statements that, in the opinion of the City Manager or authorized designee, are intended to mislead the City in its evaluation of the SOQ.

B. Submittal Quantities. Interested Vendors must submit **one PDF copy** of the SOQ via the City’s [Solicitation Webpage](#) on Vendor Registry. The PDF file must be in one file. Failure to adhere to the submittal quantity criteria shall result in the submittal being determined non-responsive.

C. Required Submittal. The SOQ shall be a maximum of **12** pages to address the SOQ criteria (excluding cover letter, resumes, the Vendor Information Form, and the Past Performance Verification Evaluation Submittal Form located in Section C), but including the materials necessary to address Project understanding, general information, organizational chart, photos, tables, graphs, and diagrams). Each page side (maximum 8 1/2” x 11”) with criteria information shall be counted. However, one page may be substituted with an 11” x 17” sheet of paper, folded to 8 1/2” x 11”, showing a proposed Project schedule or organizational chart and only having information on one side. Cover, back, table of contents and tabs may be used and shall not

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be included in the page count, unless they include additional project-specific information or SOQ criteria responses. Vendors are encouraged to utilize recyclable materials and endeavor to be considerate of the environment in the preparation of the SOQ. The minimum allowable font for the SOQ is **11 pt, Arial, or Times New Roman**. Failure to adhere to the page limit, size, and font criteria shall result in the SOQ being determined non-responsive. Each SOQ shall be submitted with the documents necessary to meet all of the requirements of this solicitation, including the information required in Part II and the following:

- (1) Cover letter with an **original ink signature** by a person authorized to bind the Vendor. Submittals without a cover letter with an **original ink signature** by a person authorized to bind the Vendor may be determined non-responsive.
- (2) Vendor Information Form, with **original ink signature**.
- (3) Past Performance Verification Evaluation Submittal Form (Section C, Exhibit A).
- (4) Project Schedule, if required.
- (5) Resumes, Licenses, and Certifications (if required).
- (6) Acknowledgment page, with an **original ink signature**, for any Addendum received.

D. Vendor Responsibilities. All Vendors shall (1) examine the entire RFQ, (2) seek clarification of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting an SOQ and (4) submit the entire SOQ by the official SOQ Due Date and Time. A late SOQ will not be accepted. A Vendor submitting a late SOQ shall be so notified. Negligence in preparing an SOQ shall not be good cause for withdrawal after the SOQ Due Date and Time.

E. Online Submittals Only. All SOQ shall be submitted electronically via the City's [Solicitation Webpage](#) on Vendor Registry and shall be attached to the corresponding solicitation project and clearly marked with the RFQ number and title, "[RFQ PW 20-049 Request for Statement of Qualification for Water System Professional Engineering Services](#)". The City is not responsible for the pre-opening of, post-opening of, or the failure to open, any SOQ not properly addressed or identified.

F. Address. All SOQ shall be submitted electronically via the City's [Solicitation Webpage](#) on Vendor Registry. SOQ must be received by the SOQ Due Date and Time indicated on the cover page of this RFQ. Telegraphic (facsimile), electronic (e-mail) or mailgram SOQ will not be considered.

G. Amendment/Withdrawal of SOQ. At any time prior to the specified SOQ Due Date and Time, a Vendor (or designated representative) may amend or withdraw its SOQ. Any

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erasures, interlineations, or other modifications in the SOQ shall be initialed in **original ink** by the authorized person signing the SOQ. Facsimile, electronic (e-mail) or mailgram SOQ amendments or withdrawals will not be considered. No SOQ shall be altered, amended or withdrawn after the specified SOQ Due Date and Time.

1.3 Cost of SOQ Preparation. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. An SOQ submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Vendor is responsible for all costs incurred in responding to this RFQ. All materials and documents submitted in response to this RFQ become the property of the City and will not be returned.

1.4 Inquiries.

A. Written/Verbal Inquiries. Any question related to the RFQ shall be directed to the City staff whose name appears on the cover page of this RFQ. Questions shall be submitted in writing, via e-mail or on the City's [Solicitation Webpage](#) on Vendor Registry, by the close of business on the Final Date for Inquiries indicated on the cover page of this RFQ. Any inquiries related to this RFQ shall refer to the title and number, page and paragraph. Any Vendor found to be communicating with any member of City staff about this solicitation shall be prohibited from submitting an SOQ, or if an SOQ is received, such SOQ shall be deemed non-responsive.

B. Inquiries Answered. All inquiries must be directed to the Procurement Officer. Verbal or telephone inquiries **will not be answered**, and Vendors attempting to do so will be directed to submit written inquiries. The City shall provide a compilation of all questions received in writing with official answers that will be made available on the City's [Solicitation Webpage](#) on Vendor Registry. The City shall endeavor to post the compilation not later than five days after the inquiry deadline.

C. Pre-Submittal Conference. A Pre-Submittal Conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this RFQ. Vendors are strongly encouraged to attend the Pre-Submittal Conference, even if designated as non-mandatory. The purpose of this conference will be to clarify the contents of this RFQ in order to prevent any misunderstanding of the City's requirements. Any doubt as to the requirements of this RFQ or any apparent omission or discrepancy should be presented to the City at this conference. The City may issue a written amendment or addendum to this RFQ. Oral statements or instructions are provided for informational purposes only and do not become a part of this RFQ. Any change to the RFQ shall be made in the form of an amendment or addendum.

1.5 Addenda. Any addendum issued as a result of any change in this RFQ shall become part of the RFQ and must be acknowledged in the SOQ submittal. Failure to indicate receipt of the addendum may result in the SOQ being rejected as non-responsive. It shall be the Vendor's responsibility to check for addenda issued to this RFQ. Any addendum issued by the City with respect to this RFQ will be posted on the City's [Solicitation Webpage](#) on Vendor Registry.

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1.6 Cancellation of RFQ. The City reserves the right to cancel a RFQ, reject in whole or in part any or all submittals or determine not to enter into one or more of the multiple contracts as specified in the solicitation if the City determines in its absolute and sole discretion that such action is in the best interest of the City.

1.7 Public Record. All SOQ shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code.

1.8 Confidential Information. If a Vendor believes that an SOQ or protest contains information that should be withheld from the public record, a statement advising the City of this fact shall accompany the submission and the information shall be clearly identified. The information identified by the Vendor as confidential shall not be disclosed until the City Manager, or authorized designee, makes a written determination. The City Manager or authorized designee shall review the statement and information with the City Attorney and shall determine in writing whether the information shall be withheld. If the City Attorney determines that it is proper to disclose the information, the City shall inform the Vendor in writing of such determination.

1.9 Vendor Licensing and Registration. Prior to the award of the Agreement, the successful Vendor shall (A) be registered with the Arizona Corporation Commission and authorized to do business in Arizona and (B) have a completed Vendor Registration Packet on file with the City Finance and Budget Department. The Vendor shall provide licensure information with the SOQ. Corporations and limited liability companies shall be able to provide a Certificate of Good Standing from the Arizona Corporation Commission.

1.10 Certification. By submitting an SOQ, the Vendor certifies:

A. No Collusion. The submission of the SOQ did not involve collusion or other anti-competitive practices.

B. No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.

C. No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a City employee, officer or agent in connection with the submitted SOQ. It (including the Vendor's employees, representatives, agents, lobbyists, attorneys, and subcontractors) has refrained, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating a bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, elected officials, the City Manager, Assistant City Managers, Department Heads, and other City staff. All inquiries must be addressed to the City. Any attempt to influence the selection process by any means shall void the submitted SOQ and any resulting Agreement.

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D. Financial Stability. It is financially stable, solvent, and has adequate cash reserves to meet all financial obligations, including any potential costs resulting from an award of the Agreement.

E. No Signature/False or Misleading Statement. The signature on the cover letter of the SOQ and the Vendor Information Form is genuine, and the person signing has the authority to bind the Vendor. Failure to sign the cover letter and the Vendor Information Form, or signing either with a false or misleading statement, shall void the submitted SOQ and any resulting Agreement.

F. Professional Services Agreement. In addition to reviewing and understanding the submittal requirements, it has reviewed the attached sample Professional Services Agreement, including the Scope of Work and other Exhibits.

1.11 Award of Agreement.

A. Evaluation; Selection. A Selection Committee composed of representatives from the City will conduct the selection process according to the schedule on the cover page of this RFQ. The Selection Committee will create a final ranking of the Vendors based upon demonstrated competence and qualifications for the type of professional services presented in vendors' submittal and oral interviews. The Selection Committee will evaluate based on the selection criteria and relative weight of the selection criteria in this RFQ and shall select at least three (3), but not more than five (5) Vendors for oral interviews with the Selection Committee. The City will conduct the oral interviews with the selected Vendors, and upon completion of the final tabulation of points for scored components, will create a final list, in order of preference, of the three (3) most qualified Vendors.

B. Final List; Negotiations. After the interviews and upon completion of the final tabulation of points for scored components, the City will create a final list, in order of preference, of the three (3) most qualified Vendors. The City will conduct separate negotiations on the consideration of compensation and contract terms with the three (3) highest qualified firms on the final list.

C. Multiple Award. The City will award three (3) contracts for Vendors to provide professional engineering services for City's Water Systems and City intends to award multiple contracts to separate persons or firms.

D. Form of Agreement. The selected Vendors will be required to execute the City's standard Professional Services Agreement in a form acceptable to the City Attorney. A sample of the Professional Services Agreement is included with this RFQ. If the City is unsuccessful in negotiating an Agreement with a highest-scoring Vendor, the City may then negotiate with the second, then third, highest-scoring Vendor until an Agreement is executed. City Council approval may be required. The City reserves the right to terminate the selection process at any time.

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E. Waiver; Rejection; Reissuance. Notwithstanding any other provision of this RFQ, the City expressly reserves the right to: (1) waive any immaterial defect or informality, (2) reject any or all SOQ or portions thereof, and (3) cancel or reissue an RFQ.

F. Protests. Any Vendor may protest this RFQ, the proposed award of an Agreement, or the actual award of an Agreement. All protests will be considered in accordance with the City Procurement Code.

1.12 Offer. An SOQ submittal is an offer to contract with the City based upon the terms, conditions and specifications contained in this RFQ and the Vendor's responsive SOQ, unless any of the terms, conditions, or specifications are modified by a written addendum or agreement amendment. Provided, however, that no contractual relationship shall be established until the Vendor has signed, and the City has approved, a professional services agreement between the City and the Vendor in the form acceptable to the City Attorney. A sample Professional Services Agreement is included herein.

PART II. STATEMENT OF QUALIFICATIONS FORMAT; SCORING

2.1 Evaluation Process. Each submittal will be reviewed for compliance with the submittal requirements and scored and ranked by the Selection Committee. The Selection Committee shall determine if the selection can be made on the basis of the written materials only, or if oral interviews are necessary with the highest-ranked Vendors based upon the SOQ submittal scoring.

2.2 SOQ Format and Scoring. The SOQ shall be organized and submitted in the format as outlined below. Failure to conform to the designated format, standards and minimum requirements shall result in a determination that the SOQ is non-responsive. Additionally, the Selection Committee will evaluate and award points to each SOQ based upon the evaluation criteria as outlined in this document. Points listed below are the maximum number of points possible for each criterion and not the minimum number that the Selection Committee may award.

A. General Information - 5 pts.

(1) One-page cover letter as described in Part I. Subsection 1.2(C) (Required Submittal).

(2) Provide Vendor identification information. Explain the Vendor's legal organization, including the legal name, address, identification number, and legal form of the Vendor (e.g., partnership, corporation, joint venture, limited liability company, sole proprietorship). If a joint venture, identify the members of the joint venture and provide all of the information required under this section for each member. If a limited liability company, provide the name of the member or members authorized to act on the company's behalf. If the Vendor is a wholly-owned subsidiary of another company, identify the parent company. If the corporation is a nonprofit corporation, provide nonprofit documentation.

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Provide the name, address, and telephone number of the person to contact concerning the SOQ.

(3) Identify the location of the Vendor's principal office and the local work office, if different from the principal office. Include any documentation that supports the Vendor's authority to provide services in Arizona.

(4) Provide a general description of the Vendor that is proposing to provide the Services, including years in business.

(5) Identify any contract or subcontract held by the Vendor or officers of the Vendor that has been terminated within the last five years. Briefly describe the circumstances and the outcome.

(6) Identify any claims arising from a contract that resulted in litigation or arbitration within the last five years. Briefly describe the circumstances and the outcome.

(7) Vendor Information Form, with an **original ink signature** (may be attached as a separate appendix).

B. **Experience and Qualifications of the Vendor - 35 pts.**

(1) Provide a detailed description of the Vendor's experience in providing similar services to municipalities or other entities of a similar size to the City, specifically relating experience with respect to Water System professional engineering services.

(2) Past Performance Verification Form (PPVF) - The City desires to receive feedback on the past performance of your projects. Email or fax a copy of the Past Performance Verification form (attached as Section C) to Public/Private Agencies, for which you have substantially completed similar work, to fill out a copy of the PPVF for three (3) similar projects. Provide the form to the Owner or Owner's representative, directly responsible for oversight of the project to complete and submit to the City via email or fax prior to the date and time listed on the form. If your firm has completed previous similar work for the City, it is recommended that you utilize this experience. If your firm has not completed prior projects with the City, you will not be penalized.

Please list the agency or firm name, address, phone number and contact information for the Agency that will be providing the Past Performance Verification Form on attached Exhibit A and include as an appendix to the SOQ. Past Performance Verification Forms will only be accepted from the Agencies listed on Exhibit A. **Each completed PPVF form (total of three) that is returned by the due date will be awarded 5 (five) points towards this category.**

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Zero points will be awarded for projects:

- If Exhibit A is not included in the SOQ.
- If a PPVF is received after the date and time specified on the form.
- If a project is not listed in Exhibit A.
- If a project submitted is not substantially complete.
- If the firm submitting was not the prime Architect/Engineer, Contractor, or Design-Builder.
- If the person responding was not directly responsible for project oversight.

It is the responsibility of the firm submitting the SOQ to ensure that the City receives all Past Performance Verification Forms prior to the deadline. For the purpose of this Solicitation, “successful completion” means the completion of a project within the established schedule and budget, and “similar projects” resemble this project in size, nature and scope.

It is the Vendor’s responsibility to ensure that all information is accurate, current, and submitted to the Procurement Officer listed on the PPVF before the due date.

(3) The City may conduct any investigation deemed necessary to determine the Vendor’s ability to perform the project. Vendors may be requested to submit additional documentation within 72 hours (or as specified) to assist the City in its evaluation.

C. **Key Positions - 30 pts.**

(1) Identify each key personnel member that will render services to the City, including title and relevant experience required, including the proposed project manager and project staff.

(2) Indicate the roles and responsibilities of each key position. Include senior members of the Vendor only from the perspective of what their role will be in providing services to the City.

(3) If a subcontractor is used for all work of a certain type, the Vendor must include information on this subcontractor. A detailed plan for providing supervision must be included.

(4) Attach a résumé and evidence of certification, if any, for each key personnel member and/or subcontractor to be involved in this Project. Résumés should be attached together as a single appendix at the end of the SOQ and will not count toward the SOQ page limit. However, each resume shall not exceed two pages in length.

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D. **Project Approach - 30 pts.**

(1) Describe the Vendor's approach to performing the required Services in the Scope of Work described in Article 1 of the Professional Services Agreement, including the following processes:

- (a) Planning.
- (b) Estimating.
- (c) Cost controls.
- (d) Project management and team organization during _____ services.
- (e) Bid package management.
- (f) Management of overhead costs.

(2) Describe any alternate approaches if it is believed that such an approach would best suit the needs of the City. Include rationale for alternate approaches and indicate how the Vendor will ensure that all efforts are coordinated with the City's Representatives.

Total Possible Points for SOQ Submittal:

100

PART III. ORAL INTERVIEWS; SCORING

The City will proceed with conducting oral interview(s) with the three (3) but no more than five (5), highest ranked Vendor(s) which the Evaluation Committee deems to warrant further consideration. The selected Vendors will be invited to participate in discussions with the Selection Committee on the date indicated on the cover page of this RFQ and awarded points based upon the criteria as outlined below. Vendors may be given additional information for these oral interviews.

Oral Interview

| | |
|------------|---|
| 20 | Experience and Qualifications of the Vendor |
| 40 | Key Positions |
| <u>40</u> | Project Approach |
| 100 | Total Possible Points for Oral Interview |

Total Points Possible for this RFQ:

200

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PART IV. VENDOR INFORMATION FORM

By submitting a Statement of Qualifications, the submitting Vendor certifies that it has reviewed the administrative information and draft of the Professional Services Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

VENDOR SUBMITTING SOQ

FEDERAL TAX ID NUMBER

PRINTED NAME AND TITLE

AUTHORIZED SIGNATURE

ADDRESS

TELEPHONE

FAX #

CITY STATE ZIP

DATE

WEB SITE: _____

E-MAIL ADDRESS: _____

ARIZONA CORPORATION COMMISSION FILE NO. _____

SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):

- _____ Small Business Enterprise (SBE)
_____ Minority Business Enterprise (MBE)
_____ Disadvantaged Business Enterprise (DBE)
_____ Women-Owned Business Enterprise (WBE)

Has the Vendor been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise? () Yes () No

If yes, please provide details and documentation of the certification.

SECTION B – SAMPLE PSA

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

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is entered into as of _____, 2020, between the City of Avondale, an Arizona municipal corporation (the “City”) and _____, a(n) _____ (the “Consultant”).

RECITALS

A. The City issued a Request for Statements of Qualifications, PW20-049 “WATER SYSTEM PROFESSIONAL ENGINEERING SERVICES” (the “RFQ”), a copy of which is on file in the City’s Finance Office and incorporated herein by reference, seeking statements of qualifications from vendors for WATER SYSTEM PROFESSIONAL ENGINEERING SERVICES(the “Services”).

B. The City of Avondale incorporated in 1946 and is located in the west valley of the greater Phoenix metropolitan area north of the Estrella Mountains. With a population of about 85,000, Avondale provides water and wastewater utility service to approximately 25,000 metered locations. Avondale is currently 47 square miles in size, with a planning area of over 90 square miles. The City of Avondale operates and maintains a water system that includes 15 potable wells, three groundwater treatment facilities, six reservoirs, and booster pump station sites along with over 300 miles of distribution and transmission pipe. The wastewater system includes a 9.0 MGD water reclamation facility, ten (10) wastewater lift stations, 6.5 miles of sewer force main, and 235 miles of gravity sewer.

C. The Consultant responded to the RFQ, Water System Professional Engineering Services and by submitting a Statement of Qualifications (the “SOQ”), 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.

D. During the term of the Agreement, work will be conducted after the issuance of a Task Order. The City will issue a Request for Statement of Work request the Consultant to prepare a statement of work (“SOW”) consist of scope of work, fee schedule, task order schedule, and deliverables for the project to be included in a task order. If the Consultant’s statement of work is acceptable, the City and the Consultant will execute a task order, and the City will direct the Consultant to proceed with the work.

SECTION B – SAMPLE PSA

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:

ARTICLE 1 SCOPE OF WORK

Consultant shall provide professional consulting services for the 2020/2021 Fiscal Year related to the City of Avondale's water system. Per A.R.S. 34-604 multiple contracts for professional services may or will be executed through fiscal years 2024/2025. The Consultant shall provide professional engineering services, including but not limited to conducting studies, planning, design services, construction documentation and specifications, cost estimates, value engineering, advertisement and bidding support, construction management and other related services pertaining to the City's Water systems.

ARTICLE 2 CONTRACT TIME

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 _____, 2021 (the "Initial Term"), unless terminated as otherwise provided in this Agreement.

1.2 **Renewal Terms.** After the expiration of the Initial Term, this Agreement shall automatically renew for up to four successive one-year terms (each, a "Renewal Term") so long as the fund is available and appropriated in each subsequent year, unless the Consultant notifies the City in writing of its desire to terminate the Contract. If extended, the then-current prices shall be applicable during the subsequent Renewal Term unless the Consultant notifies the City 90 days prior to contract expiration date in writing of any rate increase and the City approves the increase with an authorized signature, prior to the end of the then-current term. 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.

SECTION B – SAMPLE PSA

ARTICLE 3 TASK ORDER

1. Task Order/Purchase Order Issuance. A Task Order/Purchase Order shall be issued as follows:

1.2 Request for Statement of Work (SOW). When the City determines Work is needed, the City shall notify the Consultant of an existing requirement.

1.3 Response. Upon the receipt of the Request for SOW, the Consultant shall respond within two (2) working days, or as otherwise agreed, by visiting the proposed site in the company of the City Representative or establishing contact with the City Representative to further define the scope of the requirement.

1.4 Preparation of Statement of Work. After mutual agreement on the scope of the Work to be performed, the Consultant shall then prepare an SOW, unless Consultant, in its sole discretion, elects not to undertake the Work. If the Work is declined, the Consultant will so notify the City within four (4) working days.

1.5 SOW Deadline. The Consultant shall submit SOW to the City within 15 days unless otherwise agreed.

1.6 Review. Upon receipt of SOW, the City will review the SOW for completeness and will reach an agreement with the Consultant on all terms prior to issuance of a Task Order/Purchase Order.

1.7 No Obligation. If the City does not issue a Task Order/Purchase Order after receipt of the Consultant's SOW, the City is not obligated to reimburse the Consultant for any costs incurred in the preparation of the SOW.

1.8 Written Task Order/Purchase Order. Performance of the Work shall be undertaken only upon the issuance of written Task Order/Purchase Order by the City setting forth the following: (A) contract number along with Consultant's name; (B) Task Order/Purchase Order number and date; (C) the agreed-upon SOW and applicable technical specifications and/or drawings; (D) the agreed-upon period of performance and Work schedule (Task Order Schedule), if required by the City Representative; (E) the place of performance; (F) the agreed total price in SOW; (G) submittal requirements; (H) the City Representative who will accept the deliverable; (I) signatures by the Parties hereto signifying agreement with the specific terms of the Task Order/Purchase Order; and (J) such other information as may be necessary to perform the Work.

1.9 Task Order/Purchase Order Amendment. A Task Order/Purchase Order may be amended by the City in accordance with Article 6 Section 1 Change Order.

SECTION B – SAMPLE PSA

ARTICLE 4 PERFORMANCE OF THE WORK

1. Preliminary Phase. The Consultant shall review the City's Request for SOW, and return to the City a written SOW stating the scope of the project, names of sub-consultants, and the number of days to complete the project, the Consultant's fee, anticipated reimbursable, and other requested information.

When the City issues a Notice to Proceed to the Consultant, the Consultant shall prepare an Outline of the Services, leading to a recommended solution, together with a general description of the project, for approval by the City, and Consultant shall submit to the City one PDF copy of the outline and the Estimate of Probable Total Project Cost, based on current unit costs.

Based on the approved Outline and Estimate of Probable Total Project Cost, the Consultant shall perform the Services. The Consultant shall submit to the City one PDF copy of the completed Project Documents and a revised Estimate of Probable Project Cost.

For the purpose of payment to the Consultant, the Preliminary Phase shall be considered complete upon approval by the City of the Outline of the Services and the Estimate of Probable Total Project Cost.

2. Study and Report Phase. Identify and analyze requirements of governmental authorities having jurisdiction to approve portions of the Project.

Evaluate various alternate solutions available to the City if described in the Request for SOW. After consultation with the City, recommend to City those solutions which, in Consultant's professional judgment, best meet City's requirements for the Project.

Prepare the Report. This Report will be accompanied by Consultant's estimate of Total Project Cost for each solution which is recommended for the Project, itemized as follows: an estimate of Total Construction Cost, allowances for contingencies, the total cost of services provided by Consultant, and allowances for other items and services included within the definition of Total Project Costs and identified by the City.

Furnish the Report to and review it with the City.

Revise the report in response to the City's comments, as appropriate. Submit to the City a copy of the Report in PDF format in quantity specified by the City within the stipulated period indicated in the Request for SOW and SOW.

For the purpose of payment to the Consultant, services under the Study and Report Phase will be considered complete when the Study or Report has been accepted by the City as complete, which acceptance will not be unreasonably withheld.

3. Preliminary Design Phase: On the basis of selection by the City of the recommended solution, or modified solution agreed upon by City and Consultant, prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

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Based on the information contained in the Preliminary Design documents, submit a revised estimate of Total Construction Cost, and any adjustment to Total Project Cost known to Consultant.

Furnish Preliminary Design documents to and review them with the City within the stipulated period indicated in the Request for SOW and SOW.

For the purpose of payment to the Consultant, services under the Preliminary Design Phase will be considered complete when the Preliminary Design documents have been accepted by the City as complete.

4. Final Design/Construction Documents Phase: If the project involves construction or demolition, the consultant shall prepare, from the approved preliminary design, modifications or changes, and revised estimated construction cost, construction documents consisting of working drawings and specifications set forth in detail the work required for the architectural, civil, transportation, structural, mechanical, electrical, site, and other work, and the necessary bidding information, general conditions, supplementary conditions and SOW forms. The consultant shall submit to the city one copy of the construction documents in PDF format, and a further revised estimate of the total construction cost.

Consultant shall include in construction documents requirement that construction contractor provides a final survey of the project by a registered surveyor, and provide marked up construction drawings to the consultant so the consultant can prepare and deliver to the city the as-built in the form required by the city.

Prior to final approval of the construction documents by the city, the consultant shall conduct a preliminary check of any work products to ensure compliance with requirements of any county, city, state, or federal agency from which a permit or other approval is required. The Consultant shall prepare all support documents to accompany any necessary permit applications. The Consultant shall respond to all technical questions from regulatory agencies. The Consultant shall modify at no additional cost to the city, construction documents in order to acquire the necessary permits.

The consultant shall signify his responsibility for the construction documents prepared pursuant to this agreement by affixing his signature, date, and seal. If requested, the consultant shall review and analyze the bids received by the city, and shall make a recommendation for an award based on the city's purchasing ordinance.

Should any component of the design or report not meet applicable regulations or codes in effect at the time of completion of the design, the consultant shall redesign with no additional cost to the city.

Consultant shall provide to the city, and fee shall include specifications on a disc or flash drive, and drawings and as-built on the latest version of AutoCAD or other media as required by the city.

Consultant's services under the construction document phase will be considered partially complete when the bid documents are delivered to and accepted by the city, and finally, complete when the CAD drawings in. Dxf Format are delivered to and accepted by the city.

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Estimates of construction costs provided for herein are to be made on the basis of industry-recognized publications, historical price lists, or services estimating the current cost of comparable construction in Arizona.

5. Bidding Phase: If requested, the consultant shall provide the city with a list of recommended prospective bidders. The consultant shall attend all pre-bid conferences, prepare and distribute minutes. The consultant shall issue addenda through the city's purchasing agent as appropriate to clarify, correct, or change bid documents.

If pre-qualification of bidders is required as set forth in the request for SOW, the Consultant shall assist the city in developing qualification criteria, review qualifications of prospective bidders, and recommend acceptance or rejection of the prospective bidders.

If requested, the Consultant shall evaluate bids and bidders, and recommend award to the city.

For the purpose of payment to the consultant, the bidding phase will terminate and the services of the consultant will be considered complete upon signing of an agreement with a contractor, or cancellation of the project by the city prior to the signing of the agreement with a contractor. Rejection of bids by the city does not constitute cancellation of the project.

6. Construction/Demolition Phase: To the extent provided by the contract for any project between the city and the contractor, the consultant shall make recommendations to the city on all claims of the city and contractor regarding the interpretation of the construction documents, and on all other matters relating to the execution and progress of the work. The consultant shall check and approve samples, schedules, shop drawings, and other submissions for conformance with the concept of the project, and for compliance with the information given by the construction documents, prepare change orders, assemble written guarantees required of the contractor, and approve progress payments to the contractor based on the project schedule of values and percent of completion of work.

The consultant shall carefully review and examine the contractor's schedule of values, together with any supporting documentation. The purpose of such review and examination is to protect the city from an unbalanced schedule of values which allocates greater value to certain elements of the services that is indicated by industry standards, supporting documentation, or data.

If the schedule of values is not found to be appropriate, it shall be returned to the contractor for revision or supporting documentation. After making such examination, when the schedule of values is found to be appropriate, the consultant shall sign the schedule of values thereby indicating their informed belief that the schedule of

Values constitute a reasonable, balanced basis for payment of the contract price to the contractor.

The consultant shall conduct a pre-construction meeting with the contractor(s), the city, and utility companies; prepare and distribute minutes of the meeting.

The consultant shall make inspections of the work based on the type and frequency defined in the Statement of Work on which the consultant provided. The Consultant's inspections shall determine the progress and quality of the work, and whether the work is proceeding in accordance with the construction documents. The Consultant will provide the city with a written report of each inspection in order to inform the city of the progress of the work.

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The Consultant shall endeavor to guard the city against defects and deficiencies in the work of contractors and make a written recommendation to the city that work fails to conform to the construction documents. Based on such inspections, and the contractor's applications for payment, he will recommend the amount owing to the contractor, and will issue certificates for payment in such amount. These certifications will constitute a representation to the city, based on such inspections and the data comprising the application for payment that the work has progressed to the point indicated. By issuing a certificate for payment, the consultant will also represent to the city that, to the best of his knowledge, information, and belief, based on what his inspections have revealed, the work is in accordance with the construction documents. He/She will conduct inspections to determine the dates of substantial and final completion and recommend the issuance of a final certificate for payment. All inspections and certificates of payment provided by the Consultant shall be sufficient to provide all certifications required by city, county, state, and federal agencies.

The consultant shall revise the construction drawings and submit as-built or corrected CAD drawings to the city to show those changes made during the construction process, based on the marked-up prints, drawings, and other data furnished by the contractor.

The consultant shall attend regularly scheduled progress meetings on-site, if included in the scope of work, prepare and distribute minutes.

The consultant shall prepare construction change orders for the city's approval. Consultant shall not authorize any changes in services or time, no matter how minor, without the prior written approval of the city.

Should consultant approve progress payments to the contractor in excess of the value of the work performed, and the contractor defaults. Leaving insufficient funds to complete the work, the Consultant shall reimburse the city for the difference between the amount of the progress payment actually approved and the amount which should have been approved.

If any portion of the work is covered, based on approval of the Consultant, without the City's and building official's inspection and approval, the city's representative may direct that portion of the work uncovered for inspection. If that portion of the work uncovered is not defective and is in accordance with the plans and specifications, the Consultant shall bear the cost of uncovering and covering the work. If that portion of the work uncovered is defective or not in accordance with the plans and specifications, the contractor shall bear the cost of uncovering, repairing, and covering the work.

For the purpose of payment to the Consultant, the construction demolition phase shall be considered complete upon the compilation of punch list by the Consultant, written notification to the contractor by the Consultant of all documents, training, as-built, releases of lien, and a written recommendation by the Consultant of final payment.

7. Errors and Omissions: The consultant shall be responsible for technically deficient designs, reports, or studies due to his errors and omissions, and shall promptly correct or replace all such deficient design work due to his/her errors and omissions without cost to the city upon the request of the city for five years after the date of acceptance of the services by the city when judged to have been in error by a court of competent jurisdiction. The Consultant shall also be responsible

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for the cost of correcting deficient construction which was built from technically deficient designs. Payment in full by the city for work performed does not constitute a waiver of this guarantee.

8. Additional Services: The consultant will, upon written request of the city, provide any and all other services normally falling within the scope of services offered by the consultant through their in-house staff.

If any of the following or other, additional services are authorized in writing by the city, they may be paid for by the city, plus reimbursable expenses, with a negotiated upset limit.

8.1 Additional services due to significant changes in the general scope of the project or its requirements.

8.2 Making measured drawings of existing construction.

8.3 Providing programming services in connection with defining project scope or budget, including implications of ADA and building code requirements.

8.4 Revising previously approved drawings or specifications to accomplish changes.

8.5 Making an inspection of the project prior to the expiration of the guarantee period, and reporting observed discrepancies under guarantees provided by the construction contracts.

ARTICLE 5 COMPENSATION

The consultant agrees to perform the professional services for either:

The hourly labor rate as set forth, with a negotiated upset limit. The consultant shall be entitled to receive reimbursement for expenses at the consultant's exact cost, which costs have been included in the Consultant's SOW for each project and approved by the city; or,

A negotiated lump sum fee based on the rates set forth plus approved reimbursable expenses.

Approved reimbursable expenses shall be paid to the consultant at exact cost, and upon proof of payment by the Consultant. Anticipated reimbursable expenses shall be included with the Consultant's SOW.

Consultant agrees to keep, furnish, and support statements with copies of invoices, statements of times expended, and other supporting documentation as the city may require. Statements for fees based on hourly rates will be rendered monthly as the work progresses or as otherwise agreed upon. Reimbursable expenses will be invoiced monthly at cost, as the work progresses, or as otherwise agreed upon. Such documentation and records will be available at all reasonable times for examination and audit by the city. Incomplete or incorrect entries in such books and records shall be immediately corrected or completed upon being called to the attention of the consultant. Any loss caused to the city by such incorrect or incomplete entries will be grounds for disallowance by the city of any fees or expenses based upon such entries. Said books and records for each project

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shall be kept for a period of three years after the completion of all work to be performed on such project, pursuant to the agreement.

Compensation to the consultant shall include the following. No claim for reimbursement for these expenses shall be made to the city.

- 1.1. All travel and vehicle expenses within State of Arizona.
- 1.2. Three sets of signed and sealed permitting plans.
- 1.3. Computer usage, telephone expenses, postage.

ARTICLE 6 ADDITIONAL PROVISIONS

1. Change Order. Changes in the Work shall only be made by a written Change Order to this Contract signed by the City and the Consultant. Changes involving increases to the Consultant's compensation or an extension of the Task Order Schedule shall be considered a Change Order and must be approved as an amendment to the Task Order and executed by the City and the Consultant. The Consultant shall not: (A) perform any additional Work; or (B) eliminate any duties included in the Work until a written amendment addressing the Change Order has been properly approved and executed by both Parties.

2. Payment: The city will make monthly payments to the consultant based on the percentage of completion of the Consultant's work, or as otherwise agreed upon. The consultant shall submit an original invoice and one copy to the city. This will be considered the official request for payment by the city.

The invoice shall include the following information: Invoice number for the PO number, Task Order number, name of project, and date;

- 2.1. The consultants lump sum or negotiated upset limit fee;
- 2.2. Percent of work completed, or employees name, titles, direct labor rates, and multiplier;
- 2.3. Amount earned;
- 2.4. Amount previously billed;
- 2.5. Amount due this invoice;
- 2.6. Retention, if applicable;
- 2.7. Balance remaining;
- 2.8. Attached list of reimbursable with appropriate receipts;
- 2.9. Summary of work done this billing period.

When the project involves bidding and construction or demolition, the project, and subsequent payments shall be divided into a minimum of three components; design, bidding, and construction.

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3. Safety Plan. The 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.

4. 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.

5. 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. 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.

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

7. 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 the Consultant.

8. 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.

9. Indemnification.

To the fullest extent permitted by law, the Consultant shall indemnify 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”) to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Consultant, its officers, employees, agents, or any tier of subcontractor in connection with Consultant’s work or services in the performance of this Agreement. The amount

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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.

10. Insurance.

10.1. 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

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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 RFQ number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFQ 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 RFQ number and title or a reference to this Agreement, as applicable, will be subject to

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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.

10.2. 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

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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.

10.3. 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.

11. Termination; Cancellation.

11.1. 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

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

11.2. 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.

11.3. 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.

11.4. 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.

11.5. 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.

11.6. 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

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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.

12. Miscellaneous.

12.1. 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 Article 1 above. 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.

12.2. 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.

12.3. 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 Occupational Safety and Health Administration standards.

12.4. 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.

12.5. 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

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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.

12.6. 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.

12.7. 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.

12.8. 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.

12.9. 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.

12.10. 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.

12.11. 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.

SECTION B – SAMPLE PSA

12.12. 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.

12.13. 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.

12.14. 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: Jill Lin, Procurement Officer

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

If to Consultant: _____

Attn: _____

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

SECTION B – SAMPLE PSA

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.

12.15. 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.

12.16. Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 12.17 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 12.17 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.

12.17. 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 subcontractors' 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.

SECTION B – SAMPLE PSA

12.18. 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.

12.19. 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 Task Order, Purchase Order, the Fee Schedule, the RFQ and the Consultant’s SOQ, the documents shall govern in the order listed herein. If the Agreement is renewed pursuant to Article 2 Subsection 1.2 above and such renewal includes any conflicting terms, other than price, those terms will be null and void.

12.20. 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.

13. Record Retention Schedule. Engineering reports, plot plans, permits and application relating to Water Systems shall be maintained for the life of the facility.

14. Rights of Decisions. All services shall be performed by the consultant to the reasonable satisfaction of the city. In cases of disagreement or ambiguity, the city shall decide all questions, difficulties, and disputes of whatever nature which may arise under or by reason of this agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof, and the city's decisions on all claims, questions, and disputes shall be final, conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable.

15. 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.

[SIGNATURES ON FOLLOWING PAGES]

SECTION B – SAMPLE PSA

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: _____

SECTION B – SAMPLE TASK ORDER

EXHIBIT A
TO
SAMPLE PROFESSIONAL SERVICE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND

[SOQ]

See following pages.

SECTION B – SAMPLE TASK ORDER

SAMPLE TASK ORDER/PURCHASE ORDER ____
BETWEEN
THE CITY OF AVONDALE
AND

THIS TASK ORDER ____ (this “Task Order”) is entered into as of _____, 2020, between the City of Avondale, an Arizona municipal corporation (the “City”), and _____, a(n) _____ (“Consultant”).

RECITALS:

A. The City and the Consultant entered into an Professional Service Agreement, No. _____, dated _____ (the “PSA”), for Consultant to be considered for _____. All capitalized terms not otherwise defined in this Task Order have the same meanings as set forth in the PSA.

B. The PSA contemplated the City would request Statement of Work (“SOW”) for Task Orders when Work was deemed necessary.

C. The City has requested SOW, Consultant has provided, a SOW to _____ (the “Work”), attached hereto as Exhibit A consist of scope of work, fee schedule, task order schedule and deliver.

D. The Consultant shall turn in all deliverables to City Representative in the required format specified by the City within the Task Order Schedule.

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. Scope of Work; Technical Specifications and Drawings. The Consultant will perform the Work in accordance with the SOW attached hereto as part of Exhibit A.

2. Additional Services. (If applicable)

3. Period of Performance and Work Schedule. The agreed-upon period of performance for the Work will be specified in Task Order Schedule attached hereto as part of Exhibit A.

SECTION B – SAMPLE TASK ORDER

5. Compensation. The City shall pay Consultant an amount not to exceed \$_____ for the Work at the rates set forth in the Fee Schedule of applicable unit prices, attached hereto as part of Exhibit A.

6. Allowances. A list of allowances related to the Work and a statement of their basis is attached hereto as part of Exhibit A.

8. Assumptions. A list of the assumptions and clarifications made by the Consultant in the preparation of the SOW is attached as part of Exhibit A.

9. City Representative. The City Representative who will accept the completed Work is _____.

10. Acceptance Period. The time limit for acceptance of the SOW is 60 days unless extended by mutual, written agreement of the City and the Consultant.

11. Effect of Task Order. During the term of the PSA, the Consultant shall perform the work after issuance of a Task Order, all terms and conditions of the PSA shall remain in full force and effect in this Task Order. In the event of any inconsistency, conflict or ambiguity among the terms of this Task Order, any amendments, the Statement of Work, Task Order, Purchase Order, the Fee Schedule, the contract clauses in PSA and the Consultant's SOQ, the documents shall govern in the order listed herein.

12. Non-Default. By executing this Task Order, the Consultant affirmatively asserts that (i) the City is not currently in default, nor has been in default at any time prior to this Task Order, under any of the terms or conditions of the PSA, including any Task Orders related thereto, and (ii) any and all Consultant claims, known and unknown, relating to the PSA or any related Task Order and existing on or before the date of this Task Order are forever waived.

13. Conflict of Interest. This Task Order and the PSA may be canceled by the City pursuant to ARIZ. REV. STAT. § 38-511.

[SIGNATURES ON FOLLOWING PAGES]

SECTION B – SAMPLE TASK ORDER

IN WITNESS WHEREOF, the parties hereto have executed Task Order No. X as of the date and year first written 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: _____

SECTION B – SAMPLE TASK ORDER

EXHIBIT A
TO
TASK ORDER ____
TO
TASK ORDER CONTRACT
BETWEEN
CITY OF AVONDALE
AND

[SOW]

See the following pages.

SECTION C - PPVF

PAST PERFORMANCE VERIFICATION (“PPVF”) FORM

See the following pages.

SECTION C - PPVF

PAST PERFORMANCE VERIFICATION FORM (PPVF)

Directions: Request Public/Private Agencies, for which you have **substantially completed** (Professional Services, CM@R or Design-Build projects) **similar work**, to fill out a copy of the PPVF for three (3) similar projects. Provide this form to the Owner or Owner's representative **directly responsible** for oversight of the project to complete and submit to the City via mail or fax prior to the date and time listed below. If the form is received after the date and time specified it will not be accepted. If your firm has completed previous similar work for the City, it is recommended that you utilize this experience. If your firm has not completed prior projects with City you will not be penalized.

SOQ Due Date and Time: **June 10, 2020 5:00 P.M. Arizona Time**

PROJECT NAME & VALUE: _____

PROJECT ROLE SUBMITTING FOR: (select one) ☐ **PROFESSIONAL** ☐ **CM@R** ☐ **DB**

NAME OF COMPANY TO BE EVALUATED: _____

NAME OF AGENCY OR FIRM SUBMITTING EVALUATION: _____

NAME/PHONE NUMBER OF PERSON SUBMITTING EVALUATION: _____

DATE PROJECT WAS SUBSTANTIALLY COMPLETED: _____

QUESTIONS:

1. Has the above referenced project reached substantial completion? (select one) ☐ **Yes** ☐ **No**
2. What project delivery method was utilized? (select one) ☐ **Design-Bid-Build** ☐ **CM@R** ☐ **DB**

What type of services did this firm provide on the project referenced? _____

3. On a scale of 1 to 10 (1 being lowest, 10 highest), rate this company's performance on the following:
 - a. How would you rate work performed by this firm on your project? _____
 - b. Was the project completed on time? _____
 - c. Was the project completed within budget? _____
 - d. What was the quality of the work performed? _____
 - e. Was staff proactive in solving problems that may have occurred on your project? _____
 - f. What was the extent of staff turnover? (*10 = low turnover, 1 = high turnover*) _____
 - g. Would you be willing to contract with this firm again? (*10 = Yes, 1 = No*) _____
4. If it's over budget, please explain: _____

5. Any additional comments. _____

Please email to (JLIN@avondaleaz.gov) by the date and time shown above.

SECTION C - PPVF

EXHIBIT A

PAST PERFORMANCE VERIFICATION EVALUATION SUBMITTALS

LIST OF THOSE AGENCIES OR FIRMS WHO WILL BE SUBMITTING EVALUATIONS
TO CITY

Please list the agency or firm name, address, phone number and contact information for the firms that will be providing the Past Performance Verification Form. It is the **responsibility of the firm** to ensure that the City receives all of the Past Performance Verification Forms prior to the SOQ submittal deadline. Failure to provide evaluations by date and time specified will result in zero points for that specific evaluation.

(NOTE: Only agencies or firms listed as 1, 2, or 3 will be accepted. Do not add lines to this form.)

1. _____

2. _____

3. _____

