

SOLICITATION AMENDMENT
RFQ No. 418002
CITY OF BUCKEYE
CONSTRUCTION & CONTRACTING DIVISION
623.349.6171

AMENDMENT #3

NOTE: Attach to Original RFQ. However, if Proposal has already been returned, complete this amendment and return for attachment to your Proposal by 4:00pm, June 28, 2018.

City of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326
Attn: Tyra Bell, Purchasing Agent

SOLICITATION: RFQ No. 418002: On-Call Information Technology (IT) Design, Program/Project Support and Installation Services

NOTICE TO VENDORS:

This Amendment forms a part of the Contract and clarifies, corrects, or modifies the original Request for Qualification documents prepared by the City of Buckeye.

Bid Due Date and Time: **June 28, 2018 at 4:00 PM**

Last Day for Questions: **June 21, 2018 at 5:00 PM**

THE FOLLOWING DOCUMENT ATTACHED HERETO IS HEREBY ADDED AS AN ATTACHMENT TO THE REQUEST FOR QUALIFICATIONS:

1. SAMPLE ON-CALL PROFESSIONAL SERVICES CONTRACT
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Q1: Clarification for on Amendment #2, Question #1:

Is there a copy of the sample contract? If so, where can we find it?

A1: Yes. Sample On-Call Professional Services Contract is an attachment with Amendment #3.

Q2: Clarification for on Amendment #2, Question #14:

We would like to see a copy of the City's Professional Services Agreement – When should that be available?

A2: Please see Q1.

The balance of the specifications and instructions remain the same. Vendors must acknowledge receipt and acceptance of this amendment by returning the entire amendment with the Proposal.

PLEASE ACKNOWLEDGE YOUR FIRM'S RECEIPT OF THIS AMENDMENT BY SIGNING THE ATTACHED SOLICITATION AMENDMENT ACKNOWLEDGEMENT.

SOLICITATION AMENDMENT ACKNOWLEDGEMENT

RFQ No. 418002

AMENDMENT NUMBER 2

AMENDMENT ISSUE DATE: June 14, 2018

Vendor certifies that Vendor has read, understands, and will fully and faithfully comply with this Request for Proposals, its attachments and any referenced documents. Vendor also certifies that this offer was independently developed without consultation with any of the other Vendors or potential Vendors.

Name of Company: _____

Authorized Signature: _____

Print Name and Title: _____

Date: _____

Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Email Address: _____

**ON-CALL PROFESSIONAL SERVICES CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
VENDOR NAME**

Contract No:

THIS CONTRACT, made and entered into by and between the CITY OF BUCKEYE, an Arizona municipal corporation, hereafter called the "CITY", and Vendor Name, hereafter called "CONSULTANT".

RECITALS

The City of Buckeye, Arizona, is authorized and empowered by the City Code to execute contracts for professional services.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein contained, The City and Consultant agree as follows:

This Contract shall be in full force and effect only when it has been approved as required by the City Code and executed by the duly authorized City officials.

1.0 SCOPE OF SERVICES

The City desires to obtain Professional Services related to On-Call Information Technology (IT) Design, Program/Project Support and Installation Services. In accordance with the contract documents, a specific scope of services and fee proposal shall be negotiated for each project and be executed by individual Task Orders. Services provided by the Consultant under this agreement shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar conditions.

The Consultant shall perform all services within the cost and timeframes defined in executed Task Orders, and comply in all respect, as described herein for the consideration stipulated, and in compliance with applicable Federal, State, and City Codes. Services at the City's request may include, in general, but are not limited to the following:

1. **Category 1: Infrastructure Design, Implementation, Installation and Support to include Network, Voice, and Video. May include but not limited to the following services:**
 - Local and Wide Area Network Planning, Design, Installation and Maintenance
 - Telephone and Telecommunications Services: System Consulting, Application Development, System Design, and/or Project Management
 - Common Carrier/Cable Service Planning and/or Consulting

- Wireless and Mobile Systems Design, Implementation and/or Management
- Network & Server Technical Support
- Log Analysis and Troubleshooting documentation
- Network Intrusion Detection and Prevention
- Wired and Wireless Networks

Note: The City anticipates no more than four (4) firms will be selected to provide the required services for Category 1.

2. Category 2: Information Technology Security and Auditing Services. May include but not limited to the following services:

- Planning, Implementation, and Management of Security of Data, Network, and Physical Facilities
- Cable TV License/Fee Audits
- Operating Systems, Technical Software, and/or Storage Architecture Analysis, Design, Implementation, and/or Administration
- Firewall/VPN Audits
- Information Technology Asset Management

Note: The City anticipates no more than two (2) firms will be selected to provide the required services for Category 2.

3. Category 3: Low Voltage Cabling and Installation. May include but not limited to the following services:

- Design and installation of structured cabling systems for telecommunications infrastructure
- Wi-Fi, TV Cabling and IP Technology Systems
- Installation of new systems and upgrades to current systems
- Installation of CCTV or IP Video systems, intrusion systems and access control systems
- Design and Installation of Fire alarm systems
- Design and Installation of Audio Visual systems
- Working knowledge of State and National code requirements and Licensing

Note: The City anticipates no more than four (4) firms will be selected to provide the required services for Category 3.

4. Category 4: Business: Program and Project Management Services – May include but not limited to the following services:

- Information Technology Management, Architecture, Planning, and/or Consulting
- Business Continuity and Disaster Recovery Planning, Design, and/or Implementation

- Consult with City staff to develop Business rules, Processes, Procedures for IT
- Develop Business Strategic and Tactical IT Plans and Solutions
- Attend Project Meetings
- Develop Cost Proposals and Projections
- Experience with all aspects of Project and Program Management Services
- Inspection, oversight of project activities, Start-up & commissioning, training and process Close-out Documents.

Note: The City anticipates no more than Two (2) firms will be selected to provide the required services for Category 4.

Note: The City anticipates no more than Two (2) firms will be selected to provide the required services for Category 4.

2.0 FEES AND PAYMENTS

2.1 REGISTRATION REQUIREMENT IN CONSULTANT SELF SERVICE (VSS)

In order to do business with the City of Buckeye, all Consultants must register at <https://selfservice.buckeyeaz.gov/MSS>. Please be aware, Consultants that do not register and verify their information, including uploading a W-9 form to their profile, may experience delays in processing of invoices and will not be able to do business with the City.

2.2 BUSINESS LICENSE REQUIREMENT

Consultants doing business within the City limits must obtain a City of Buckeye Business License in order to do business with the City. Apply for a Business License at <http://www.buckeyeaz.gov/business-licenses/>.

2.3 FEE SCHEDULE

Each Task Order over One Hundred Thousand Dollars (\$100,000.00) shall be subject to City Council Approval.

2.4 PAYMENT APPROVAL

The time spent for each task shall be recorded and submitted to the Contract Administrator. Consultant shall maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and make such materials available at all reasonable times during the contract period.

Monthly payments shall be made to the Consultant on the basis of a progress report prepared and submitted by the Consultant for work completed through the last day of the preceding calendar month. Each task shall be subject to review and approval by the Contract Administrator to determine acceptable completion.

The Contract Administrator shall prepare a partial payment request document for the Consultant's acceptance.

The Contract Administrator reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis.

All charges must be approved by the Contract Administrator prior to payment.

3.0 GENERAL TERMS AND CONDITIONS

3.1 CONTRACT ADMINISTRATOR

The Contract Administrator for the City shall be the Purchasing Agent in the Construction and Contracting Division or designee. The Contract Administrator shall oversee the performance of this Contract, assist the Consultant in contacting members of the City, audit billings, and approve payments. The Consultant shall submit all reports and special requests through the Contract Administrator.

3.2 TERM OF CONTRACT

The Contract initial term is established for a term commencing on the date of execution and ending Month, Date, Year with automatic renewals, unless otherwise terminated by either party, for four (4) additional one-year terms. Consultant shall provide services under the contract for specific project assignments with a Task Order issued no later than the final day of the effective Contract terms.

3.3 TERMINATION OF CONTRACT

The City has the right to terminate this Contract or abandon any portion of the project, which has not been performed by the Consultant.

Termination for Convenience: City and Consultant reserve the right to terminate this contract or any part hereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Consultant shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and Sub-consultants to cease such work. As compensation in full for services performed to the date of such termination, the Consultant shall receive a fee for the percentage of services actually completed. This fee shall be in the amount to be mutually agreed upon by the Consultant and the City, based on the agreed Scope of Work and the value to the City of the services completed. If there

is no mutual agreement, the Contract Administrator shall determine the percentage of completion of each task detailed in the Scope of Work and the Consultant's compensation shall be based upon such determination. The City shall make this final payment within sixty (60) days after the Consultant has delivered the last of the partially completed items. Consultant shall not be paid for any work done after receipt of the notice of termination, or for any costs incurred by Consultant's suppliers or Sub-consultants, which Consultant could reasonably have avoided.

Termination for Cause: City may also terminate this contract or any part hereof with seven (7) days written notice for cause in the event of any default by the Consultant, or if the Consultant fails to comply with any of the material terms and conditions of this contract. By way of example and not limitation, unsatisfactory performance as judged by the Contract Administrator, and failure to provide City, upon written request, with adequate assurances of future performance shall all be causes allowing City to terminate this contract for cause. In the event of termination for cause, City shall not be liable to Consultant for any amount after the issuance of written notice, and Consultant shall be liable to City for any and all damages sustained by reason of the default that gave rise to the termination.

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this contract immediately upon giving written notice to the Consultant.

In the event the City shall terminate this Contract or any part of the services as herein provided, the City shall notify the Consultant in writing, and immediately upon receiving such written notice, the Consultant shall discontinue advancing the work under this Contract and proceed to close said operations.

Upon such termination or abandonment, the Consultant shall deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City.

The Consultant shall appraise the work it has completed and submit its appraisal to the City for evaluation.

If through any cause, the Consultant shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Contract, the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of damages due the City from the Consultant is determined.

3.4 FUNDS APPROPRIATION

If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Consultant at least thirty (30) days prior to any termination for a lack of funds and will pay to the Consultant all approved charges incurred prior to Consultant's receipt of such notice, subject to the availability of funds therefore.

3.5 *AUDIT*

The City may audit all of the Consultant's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the City to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The City's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

Consultant shall require all Sub-consultants, to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Consultant and payee. Such requirements will also apply to any and all Sub-consultants.

If an audit in accordance with this article, discloses overcharges, of any nature, by the Consultant to the City in excess of five percent (5%) of the total contract billings, the actual cost of the City's audit shall be reimbursed to the City by the Consultant. Any adjustments and/or payments, which must be made as a result of any, such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Consultant.

3.6 *OWNERSHIP OF PROJECT DOCUMENTS*

All documents, including but not limited to, field notes, design notes, tracings, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, which are prepared in the performance of this Contract will become and are the property of City, including all intellectual property rights and interests.

3.7 *COMPLETENESS AND ACCURACY*

The Consultant shall be responsible for the accuracy of its work, including but not limited to, survey work, reports, supporting data, and drawings, sketches, etc. prepared or compiled pursuant to this Contract and shall correct, at its expense, all negligent errors or omissions therein which may be disclosed. The cost necessary to correct those errors attributable to the engineering errors shall be chargeable to the Consultant. Additional construction added to the project shall not be considered the responsibility of the Consultant unless the need for same was created solely by any negligent error, omission, or negligent act of the Consultant and does not result in a betterment to the City. The fact that the City has accepted or approved the Consultant's work shall in no way relieve the Consultant of any of its responsibilities.

3.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which shall be deemed to have accrued from the commencement of such action.

3.9 SUCCESSORS AND ASSIGNS

This Contract shall extend to and be binding upon the Consultant, its successors and assigns, including any individual, company, partnership, or other entity with or into which the Consultant shall merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the Consultant shall sell its assets.

3.10 ASSIGNMENT

Services covered by this Contract shall not be assigned or subcontracted in whole or in part without the prior written consent of the Contract Administrator.

3.11 SUB-CONSULTANTS

During the performance of the Contract, the Consultant may engage such additional Sub-consultants as may be required for the timely completion of this Contract. The addition of any Sub-consultants shall be subject to the prior approval of the City.

In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Consultant.

3.12 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES

The total scope of Services to be performed in accordance with this Contract is set forth herein. Services, which are not included in this Contract, will be considered Additional

Services. The Consultant shall not perform these Additional Services without written authorization in the form of an approved Change Order from the City.

3.13 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract.

3.14 CONFLICT OF INTEREST

This Contract is subject to cancellation pursuant to the provisions of A.R.S. 38-511.

3.15 FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

3.16 TAXES

The fee listed in this Contract includes any and all taxes applicable to the activities hereunder. The City shall have no obligation to pay additional amounts for taxes of any type.

3.17 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without prior written approval of such advertising or publicity by the Contract Administrator.

3.18 COUNTERPARTS

This Contract may be executed in one or more counterparts, and each executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original.

3.19 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

3.20 ARIZONA LAW

This Contract shall be governed and interpreted according to the laws of the State of Arizona.

3.21 EQUAL EMPLOYMENT OPPORTUNITY

The Consultant shall comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

3.22 NOTICES

All notices or demands required to be given, pursuant to the terms of this Contract, shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

On behalf of the Consultant: Vendor Name
 Vendor Contact
 Vendor Address
 Vendor Phone Number

On behalf of the City: Christopher Williams
 Manager, Contracting & Purchasing
 City of Buckeye
 510 East Monroe Avenue
 Buckeye, AZ 85326
 P: (623) 349-6174
 F: (623) 349-6160

With a copy to: Gust Rosenfeld, P.L.C.
 201 E. Washington, Suite 800
 Phoenix, AZ 85004-2327
 P: (602) 257-7993
 F: (602) 254-4878

Notices shall be deemed received on date delivered if delivered by hand and on the delivery date indicated on receipt if delivered by certified or registered mail.

3.24 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report

the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City shall not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

3.25 INDEMNIFICATION

To the fullest extent permitted by law, the Consultant, its successors, assigns and guarantors, shall indemnify and hold harmless City of Buckeye, its agents, representatives, officers, directors, officials and employees for, from and against all damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, to the extent caused by or resulting from any negligent act or omission of Consultant in work or services performed under this Contract, including but not limited to, the negligent acts or omissions of any Subcontractor or anyone directly or indirectly employed by any Subcontractor for whose acts Subcontractor may be liable including any injury or damages claimed by any of Consultant's and Subcontractor's employees.

Any settlement of claims shall fully release and discharge the indemnified parties from any further liability for those claims. The release and discharge shall be in writing and shall be subject to approval by the City, which approval shall not be unreasonably withheld or delayed.

It is agreed that the Consultant's indemnity obligations under this agreement are triggered only if Consultant has notice of the allegations, demands, proceedings, suits, actions, claims, damages, losses or expenses contemplated above.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

3.26 E-VERIFY REQUIREMENTS

To the extent applicable under Ariz. Rev. Stat. §41-4401, the Consultant and its sub-consultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Consultant's or its sub-consultants' 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.

3.27 PROHIBITION ON IRAN INVESTMENTS

As required by A.R.S §§35-391.06 and 35-393.06, Consultant certifies that it does not have a scrutinized business operation in either Sudan or Iran.

3.28 COMPLIANCE WITH FEDERAL IMMIGRATION LAWS AND REGULATIONS

Consultant warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214.A. Consultant acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this contract, and that the City retains the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.

3.29 ISRAEL

Pursuant to Arizona Revised Statute § 35-393.01, Consultant certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel.

3.30 COOPERATIVE PURCHASING

Specific eligible political subdivisions and nonprofit educational or public health institutions (“Eligible Procurement Unit(s)”) are permitted to utilize procurement Contracts developed by the City, at their discretion and with the Contract of the awarded Vendor. Vendor 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 Contract, in such quantities and configurations as may be agreed upon between the parties. All Cooperative procurements under this Contract shall be transacted solely between the requesting of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by 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 Contract. The City shall not be responsible for any disputes arising out of transactions made by others.

4.0 INSURANCE

A Standard Accord Certificate of Insurance is acceptable provided it is contains the additional language and deleted language as required in this contract. Failure to provide a Certificate of Insurance with the appropriate verbiage as required by this contract will result in rejection of the Certificate and delay contract execution.

Additionally, Certificates of Insurance submitted without referencing a Contract number will be subject to rejection and returned or discarded.

4.1 Insurance Representations and Requirements

4.1.1 General: Consultant agrees to comply with all City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City of Buckeye. Failure to maintain insurance as specified may result in termination of this Contract at City of Buckeye's option.

4.1.2 No Representation of Coverage Adequacy: By requiring insurance herein, City of Buckeye does not represent that coverage and limits will be adequate to protect Consultant. City of Buckeye reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract 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 Contract.

4.1.3 Additional Insured: All insurance coverage and self insured retention or deductible portions, 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 contract, City of Buckeye, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this agreement.

4.1.4 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 subject contract is satisfactorily performed, completed and formally accepted by the City of Buckeye, unless specified otherwise in this Contract.

4.1.5 Primary Insurance: Consultant's insurance shall be primary insurance as respects performance of subject contract and in the protection of City of Buckeye as an Additional Insured.

4.1.6 Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and

acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

- 4.1.7 Waiver: All policies, except Professional Liability insurance, shall contain a waiver of rights of recovery (subrogation) against City of Buckeye, its agents, representatives, officials, directors, 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.
- 4.1.8 Policy Deductibles and or Self Insured Retentions: The policies set forth in these requirements may provide coverage, which contain deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to City of Buckeye. Consultant shall be solely responsible for any such deductible or self-insured retention amount. City of Buckeye, at its option and cost, may require Consultant to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 4.1.9 Use of Sub-consultants: If any work under this agreement is subcontracted in any way, Consultant shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting City of Buckeye and Consultant. Consultant shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 4.1.10 Evidence of Insurance: Prior to commencing any work or services under this Contract, Consultant shall furnish City of Buckeye with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage(s), conditions, and limits of coverage specified in this Contract and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Buckeye shall reasonably rely upon the Certificate of Insurance 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. Such certificates shall identify the Contract work number and be sent to the designated City of Buckeye Contract Administrator. If any of the above cited policies expire during the life of this Contract, it shall be Consultant's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

1. City of Buckeye, its agents, representatives, officers, directors, officials and employees is an Additional Insured as follows:
 - a) Commercial General Liability - Under ISO Form CG 20 10 11 85 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 as respects performance of subject contract.
 3. All policies, except Professional Liability, waive rights of recovery (subrogation) against City of Buckeye, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this contract.
 4. Certificate shall cite a 30 day advance notice cancellation provision. If ACORD Certificate of Insurance form 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. .

4.2 Required Coverage

4.2.1 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 Consultants, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insureds clause. To the fullest extent allowed by law, for claims arising out of the performance of this contract, the City of Buckeye, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under Insurance Service Offices, Inc. Commercial General Liability Additional Insured Endorsement form CG 20 10 11 85, 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 paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

4.2.2 Professional Liability: If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with liability insurance limit of \$1,000,000 each

claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and Consultant shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

4.2.3 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 Contract. Coverage will be at least as broad as Insurance Services Office, Inc. 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 contract, the City of Buckeye, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under Insurance Service Offices, Inc. Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

4.2.4 Worker's Compensation Insurance: Consultant shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract 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.

4.2.5 Umbrella/Excess Liability: Umbrella/Excess Liability insurance with a limit of not less than \$2,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability, Automobile Liability, and Employer's Liability, as required above.

5.0 SOFTWARE LICENSES

As to all software licenses provided to the City as part of Consultant's obligations under this Contract, the following provisions apply:

5.1 SOURCE CODE AVAILABILITY

5.1.1 Consultant shall furnish City, without charge, a single copy of the Source Code for the Software immediately upon the occurrence of any of the following:

1. Consultant becomes insolvent; or
2. Consultant ceases to conduct business; or
3. Consultant makes a general assignment for the benefit of creditors; or

4. A petition is filed in Bankruptcy by or against Consultant.

5.1.2 Use of the Source Code shall be subject to the same restrictions as to which the Software itself is subject.

5.1.3 City shall have the right to modify Source Code in any manner it deems appropriate, provided that the Source Code as modified shall remain subject to the restrictions set forth in 5.1.2 immediately above.

5.2 *PROPRIETARY PROTECTION*

5.2.1 City acknowledges that to the extent Consultant advises the City that the Software is confidential information or is a trade secret property of the Consultant, the Software is thereby disclosed on a confidential basis under this Contract and is to be used only pursuant to the terms and conditions set forth herein.

5.2.2 Consultant shall not use or disclose any knowledge, data or proprietary information relating to City obtained in any manner whatsoever.

5.2.3 To the extent permitted by Arizona Law, the parties agree, both during the term of this Contract and for a period of seven (7) years after termination of this Contract and of all licenses granted hereunder, to hold each others' confidential information in confidence. The parties agree, unless required by government regulations or order of court, not to make each others' confidential information available in any form to any third party or to use each other's confidential information for any purposes other than the implementation of this Contract provided, however, that if Consultant's confidential information is requested to be divulged under the provisions of the Arizona Public Records Act, A.R.S., Title 39, Consultant shall reimburse to City the full cost of City's refusal to release the information, including costs of litigation, City's attorney fees, fines, penalties or assessments of opposing party's attorney fees. Each party agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the provisions of this Contract.

5.3 *NON-INFRINGEMENT*

Consultant warrants that the Software provided hereunder does not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary or property right of any person or entity. In the event of a claim against City asserting or involving such an allegation, Consultant will defend, at Consultant's expense, and will indemnify City and hold City harmless against any loss, cost, expense (including attorney fees) or liability arising out of such claim, whether or not such claim is successful. In the event an injunction or order should be obtained against use of the Software by reason of the allegations, or if in Consultant's opinion the Software is likely to become the subject of

such a claim of infringement, Consultant will, at its option and its expense: (I) procure for the City the right to continue using the Software; or (ii) replace or modify the same so that it becomes non-infringing (such modification or replacement shall be functionally equivalent to the original); or (iii) if neither (i) nor (ii) is practicable, repurchase the Software on a depreciated basis utilizing a straight line five (5) year period, commencing on the date of acceptance.

5.4 THIRD PARTY LICENSE

Consultant shall sublicense to City any and all third party Software required in the execution of this Contract. City reserves the right to accept or reject third party license terms. If City rejects the terms of a third party license, it shall be Consultant’s responsibility to negotiate acceptable terms or to supply Software from another source with terms acceptable to City. City’s acceptance of the third party license terms shall not be unreasonably withheld.

6.0 SEVERABILITY AND AUTHORITY

6.1 SEVERABILITY

If any term or provision of this Contract shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

6.2 AUTHORITY

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each party has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read, understands, and agrees to be bound by the terms and conditions of this Contract.

IN WITNESS WHEREOF, the City of Buckeye by its Manager, Construction and Contracting Division has hereunto subscribed his name this ____ day of _____, 2018.

CITY OF BUCKEYE

CONSULTANT:
VENDOR NAME

Christopher A. Williams, Manager
Contracting and Purchasing Division

By: _____
Its: _____