

City of Goodyear, Arizona	Finance Department Procurement 190 North Litchfield Road P. O. Box 5100 Goodyear, Arizona 85338 Phone: 623-882-7845 Fax: 623-925-0829
Request for Qualifications	

OP 13-2208

Materials and/or Services: Transportation Master Plan
Contract Type: Professional Services
Due Date: August 31, 2012 Time: 3:30pm Arizona Time
Procurement Specialist: Russ Welborn
Phone: (623)882-7879 Email: russ.welborn@goodyearaz.gov
Fax: (623)882-7890
Mailing Address: City of Goodyear, City Hall Front Desk
 190 North Litchfield Road
 P.O. Box 500
 Goodyear, Arizona 85338

All Offers must be received by the City of Goodyear, City Hall Front Desk, at the specified location by the date and time cited above. **Late Offers will not be considered.** Offers received by the correct date and time shall be publicly opened and read. Offerors are advised to carefully read the *entire* Solicitation Package. Offers that do not comply with all Instructions to Offerors may be disqualified.

Offerors must register as a vendor with the City of Goodyear at <https://procurement.goodyearaz.gov/bs/> to obtain a solicitation packet. RFP packages can be obtained by downloading from the City of Goodyear’s website: www.goodyearaz.gov and following these instructions: Enter City website, click on BUSINESS, click on Vendor Services/Procurement, click on Solicitations for Bids/Proposals, click on OP 13-2208. Should you experience problems downloading the solicitation, contact Russ Welborn, CPPB at the above email address.

Attendance at the Pre-Offer Conference is mandatory, unless otherwise specified herein.
Pre-Offer Conference Date: Pre-Offer conference is not required

All communications concerning this solicitation must be directed to responsible Procurement Specialist identified above, **via email** only. Communications with other city staff may disqualify you from the evaluation process.

Bob Carrier, CPPO, CPPB
Procurement Manager

Published in the Arizona Republic Southwest Section on: August 15, August 17 and August 22, August 24

INSTRUCTIONS TO OFFERORS

OP 13-2208

1. PREPARATION OF OFFER

- a. It is the responsibility of all Offerors to examine the entire solicitation package and seek clarification from the responsible Procurement Specialist of any item or requirement that may not be clear, and to check all responses for accuracy before submitting an offer.
- b. All offers shall be on the forms provided in the solicitation package. It is permissible to copy these forms if required. Telegraphic (facsimile) or email bids will not be considered
- c. The Offer and Acceptance document shall be returned with the submittal with an original blue ink signature by a person authorized to sign the Offer. Pricing documents and other documents which require information to be filled in must be done in ink, typewritten or computer printed. No Offers will be accepted if pencil is used. Erasures, interlineations, or other modifications in the Offer shall be initialed in original blue ink by the authorized person signing the Offer.
- d. It is the Offeror's responsibility to obtain a copy of any addenda relevant to this solicitation. Failure to submit addenda with the solicitation response may be grounds for deeming a bid non-responsive.
- e. Offers shall be submitted in a sealed envelope provided by the Offeror, and should include the Offeror's name, address and solicitation number on outside of the sealed envelope/package.
- f. Periods of time, stated as a number of days, shall be calendar days.
- g. It is the responsibility of the Offeror to submit the offer at the place and by the time provided in the solicitation.
- h. Negligence in preparing an offer confers no right of withdrawal after the due date and time of the offer. No offer shall be altered, amended, or withdrawn after the specified offer due date and time.
- i. Offers shall include all costs as described and indicated by the specifications. The City is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item.
- j. If price is a consideration, and in case of error in the extension of prices in the offer, the unit price shall govern.
- k. The City shall not reimburse the cost of developing, presenting, or providing any responses to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
- l. Offeror shall submit one (1) original, marked "original" and five (5) copies of their offer with their submittal.

2. SERIAL NUMBERS

Offers shall be for equipment on which the original manufacturer's serial number, if applicable, has not been altered in any way. Throughout the contract term, the City reserves the right to reject any altered equipment.

3. BRAND NAMES

Any manufacturer's names, trade names, brand names, or catalog numbers used in the specifications are for the purposes of describing and establishing the quality level, design and performance desired. Such references are not intended to limit or restrict bidding by other vendors, but are intended to establish the quality, design or performance which is desired. Any Offeror which proposes equal or greater quality, design or performance may be considered. The city has the sole authority to accept or reject any like items.

4. SUBSTITUTIONS OR EXCEPTIONS

The City reserves the option to not consider offers for award if the Offeror: i) takes any exception to the specifications and the City does not agree or accept the proposed changes; or ii) proposes a unit which does not meet the City's specifications exactly and the Offeror does not additionally propose the specified unit prior to bid opening, and the City rejects the alternative identified.

5. DESCRIPTIVE LITERATURE

All bidders shall include complete manufacturer's descriptive literature regarding the equipment and goods they propose to furnish. Literature shall be sufficient in detail in order to allow full and fair evaluation of the offer submitted. Failure to include this information may result in the bid being rejected.

6. PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL

All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.

7. INQUIRIES

Any questions related to the solicitation shall be directed to the responsible Procurement Specialist whose name appears on the front page **via email only**. The Offeror shall not contact or ask questions of other City staff or the City department for which the requirement is being procured. Any correspondence related to a solicitation should refer to the solicitation number, page, and paragraph number. All questions must be submitted no later than the close of business five (5) calendar days prior to the opening date.

8. BONDING

N/A A bid bond for ten (10%) of the offer price is required to be submitted with the offer.

N/A A performance bond for one hundred (100%) of the Contract price is required at the time of execution of the Contract and shall meet the requirements of A.R.S., Title 34, as amended, if applicable.

N/A A payment bond for one hundred (100%) of the Contract price is required at the time of execution of this Contract and shall meet the requirements of A.R.S., Title 34, as amended, if applicable.

9. PRE-OFFER CONFERENCE

A Pre-Offer Conference may be held. Attendance at scheduled Pre-Offer Conferences is mandatory. The date, time and location of the conference are indicated on the cover page of this document, The Purpose of this conference will be to clarify the contents of this solicitation in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this solicitation or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine if any action is necessary and may issue a written amendment to the solicitation. *Oral statements or instructions will not constitute an amendment to this solicitation.*

10. LATE OFFERS/MODIFICATIONS/WITHDRAWALS

Offers, modifications of offers, and withdrawals received *after* the due date and time specified for receipt will be rejected and returned to the Offeror unopened. An Offeror (or designated representative) may withdraw their offer via email to the responsible Procurement Specialist any time *prior* to the solicitation due date and time.

11. AMENDMENT OF SOLICITATION

The Offeror must submit a signed copy of any solicitation amendment(s) with their offer. It is the responsibility of the Offeror to obtain the amendment from the City website.

12. PUBLIC RECORD/CONFIDENTIAL INFORMATION

All offers submitted in response to this solicitation shall become the property of the City and shall become a matter of public record available for review, subsequent to the award. If the Offeror believes that any information provided throughout the procurement process should be withheld as confidential, it is the responsibility of the Offeror to submit to the Procurement Manager a statement when the confidential information is submitted which identifies those items the Offeror believes to be confidential and the legal reason(s) why they are confidential. The Procurement Manager shall review the request for confidentiality and advise the Offeror in writing if the information will be treated as confidential by the City. If the City receives a public records request for any of the information determined to be confidential by the Procurement Manager, the City will use reasonable efforts to give notice to the Offeror prior to the release of the information.

13. OFFER ACCEPTANCE PERIOD

In order to allow for an adequate evaluation, the City requires an offer in response to this Solicitation to be valid for one hundred twenty (120) days after the opening time and date.

14. DISCUSSIONS

The City reserves the right to conduct discussions with Offerors for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the submittal in order to clarify an offer and assure full understanding of, and responsiveness to, solicitation requirements.

15. PERSONNEL

It is essential that the Offeror provide adequate experienced personnel, capable of and devoted to the successful accomplishment of the work to be performed in this Solicitation. The Offeror agrees that those persons identified in their submittal shall not be removed or replaced without a written request to and approval from the City.

16. AWARD OF CONTRACT

a. The contract will be awarded pursuant to the provisions of the City of Goodyear Procurement Code. Unless the Offeror states otherwise, or unless provided within this solicitation, the City

reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City. Notwithstanding any other provision of this solicitation, the Procurement Manager further reserves the right to i) waive any immaterial defect or informality; ii) reject any or all offers, or portions thereof; iii) reissue the solicitation; or iv) modify or cancel this solicitation.

- b. A response to a solicitation is an offer to contract with the City based upon the terms, conditions and specifications contained in the City's solicitation and the written amendments thereto, if any. If City Council approval is necessary, offers do not become contracts unless and until they are accepted by the City Council. A contract is formed when written notice of award(s) is provided to the successful Offeror(s). The Contract has its inception in the award document, eliminating a formal signing of a separate contract.
- c. In the event the City should receive two or more identical offers, the awardee will be determined by lottery.

17. BUSINESS REGISTRATION PERMIT

All Offerors awarded contracts with the City shall be required to obtain a City of Goodyear Business Registration Permit through the Goodyear Business Registration Office. For further information call Tina Daniels at (623) 882-7874 or tina.daniels@goodyearaz.gov.

18. PROTESTS

- a. Any interested party may protest a solicitation issued by the City or the proposed award or the award of a City Contract by submitting a request in writing with the Procurement Manager for the City of Goodyear, with a copy directed to the City Attorney for the City of Goodyear as follows:

Bob Carrier, CPPO, CPPB
Procurement Manager
City of Goodyear
P.O. Box 5100
190 North Litchfield Road
Goodyear, AZ 85338

Roric Massey
City Attorney
City of Goodyear
P.O. Box 5100
190 North Litchfield Road
Goodyear, AZ 85338

- b. Writing: All protests must be in writing and shall include the following information:
 - The name, address and telephone number of the protester;
 - The signature of the protester or its representative;
 - The solicitation or contract number;
 - A detailed statement of the legal or factual grounds of the protest including copies of relevant documents; and
 - The form of relief requested. R3-4-16.01
- c. Time Frame: To be considered, protests must be filed during the time frame identified in the procurement code.
 - *Protests of a solicitation* must be filed within five (5) days of the first advertising of the solicitation.
 - *Protests of an award* must be filed within ten (10) days of the issue date of the Notice of Award or Notice of Intent to Negotiate and Award.
- d. The Procurement Manager is required to notify all interested parties that a protest has been filed

END OF INSTRUCTIONS TO OFFERORS

SCOPE OF WORK

I. Purpose:

The City of Goodyear is requesting Statement of Qualifications for the development of a Transportation Master Plan.

II. Scope

Develop a Transportation Master Plan through a process that considers the strategic vision of the City and incorporates the regional planning efforts of the Maricopa Association of Governments (MAG). The city identifies the following items as critical elements to be included in the Transportation Master Plan.

- Existing conditions assessment
- Work with MAG to develop existing, near-term, and long term transportation demand models
- Gather and coordinate data and feedback from four (4) planning areas of the City for transit, bicycles, pedestrians, and truck routes.
- Coordinate plan development efforts with the City's General Plan Update and Parks and Recreation Needs Assessment and Master Plan
- Develop citywide multi-modal transportation plan for vehicles, transit, bicycles, and pedestrians
- Identify locations and phasing of crossings of Waterman Wash and the Gila River
- Identify recommended truck routes and restrictions in Goodyear
- Use of near-term model to recommend projects for CIP programming
- Identify capital and operating costs of implementation of the plan and funding strategies

III. Schedule

The Transportation Master Plan is anticipated to be completed at the end of 2013.

IV. Submittal Requirements and Proposal Content.

Each proposal shall consist of the items listed below.

1. Cover letter - Provide, the consultant to be considered and the specific RFQ being addressed.
2. Project understanding and Approach - Provide a detailed description of the consultant's proposed technical understanding and approach
3. Proposed Team - Provide experience and expertise of the key personnel proposed to be on the project, along with information on the associated support staff expected to be assigned in providing these services.
4. Experience - Describe the project teams experience with transportation master planning within the last five years. Identify each team member's role in the projects identified and

provide an organizational chart. For each key person identified, list their length of time with the firm and at least two (2) comparable projects in which they have played a primary role. For each project provide the following:

- a. Description of the project
 - b. Role of the firm
 - c. Projects original contracted cost and final cost
 - d. Project owner
 - e. Reference information
5. References - Provide no less than two (2) references from similar type and scale projects including names, addresses and telephone numbers.
 6. Submit one (1) unbound original and five (5) bound copies of your proposal.

V. Evaluation Criteria

An Evaluation Committee will be selected to evaluate all proposals. Evaluation Criteria are listed in order of descending importance.

1. Project Approach
2. Experience and Expertise of the key personnel
3. Conformance to RFQ

END OF SCOPE OF WORK

STANDARD TERMS AND CONDITIONS

**CONTRACT FOR PROFESSIONAL SERVICES
CON-12-2208**

This Professional Services Contract (“Contract”), entered into and effective between the City of Goodyear, a municipal corporation of the State of Arizona ("City") and _____, ("Consultant") as of _____, 2012 (“Effective Date”). The City engages the Consultant to perform professional services for the project known as: **Transportation Master Plan** (“Project”). The City and Consultant may be referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

- A. City seeks the temporary professional services of a skilled independent contractor for a Project which is for the benefit of the public and uses public funds;
- B. City desires to retain the professional services of a Consultant to perform certain specific duties and produce the specific work and professional services as set forth in the Scope of Work;
- C. Consultant desires to provide City with professional services consistent with best consulting practices of the industry and the standards set forth in this Contract, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this Contract.

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

In consideration of the Recitals, which are confirmed true and correct and incorporated by reference, the mutual promises and covenants contained in this Contract, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

Section 1 Definitions

- 1.1 “Architectural Work” means the definition provided by the United States Copyright Act, 17 U.S.C. § 101, *et seq.* and as otherwise provided herein.
- 1.2 “City” means the City of Goodyear.
- 1.3 “City Manager” means the manager of the City of Goodyear or designee.
- 1.4 “City Project Manager” means the person designated by the City of Goodyear to be the City Project Manager assigned to act on behalf of the City during the term of this Contract.
- 1.5 “Contract” means this Professional Services Contract version 0622012 and any attachments, exhibits and addendum referenced herein, fully completed and executed between the City of Goodyear and the Consultant.
- 1.6 “Contractor or Consultant” means the individual, partnership, entity or corporation who, as a result of the competitive process, is awarded a contract by the City of Goodyear.
- 1.7 “Days” means calendar days unless otherwise specified herein.
- 1.8 “Litigation Expense” means any court filing fee and costs, arbitration fees or costs, witness fee, arbitration fees, and each other fee and cost of investigating and defending or asserting any claim for

indemnification under this Contract, including, without limitation, in each case, attorneys' fees, professional fees, disbursements and each other fee and cost of investigating and defending, appealing or asserting any claim for indemnification under this Contract.

- 1.9 "Loss" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge, other than a litigation expense.
- 1.10 "Procurement Manager" means the City of Goodyear Procurement Manager or designee.
- 1.11 "Project" "Services" or "Work" means the subject matter of this Contract as more fully set forth in the attached Scope of Work.
- 1.12 "Subconsultant" or "Subcontractor" means any individual, corporation, company, or other entity who contracts to perform work or render services to a Consultant or to another subcontractor as part of this Contract with the City.
- 1.13 "Work Product" means but is not limited to, plans, specifications, cost estimates, tracings, studies, design analyses, original Mylar drawings, computer aided drafting and design (CADD) file, computer disks and/or other electronic records and media and all "architectural work" and "works made for hire" as defined herein and by the United States Copyright Act, 17 U.S.C. § 101, *et seq.*

Section 2 Project Team/Subconsultants

2.1 Project Team/Subconsultants.

- a. Prior to the start of any Services under this Contract, the Consultant shall submit to the City detailed resumes of the proposed Project Manager, Project Team members and any subconsultants, that Consultant wishes to assign or use to perform the Contract Services, for review and prior approval in writing of the City.
- b. Project Manager. Consultant will designate an employee as Project Manager with sufficient training, knowledge and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Contract. The City must approve the designated Project Manager.
- c. Project Team. The Project Manager and all other employees and subconsultants assigned by the Consultant, with prior approval of the City, to the Project will comprise the "Project Team."
1. Project Manager will be responsible for and will supervise all Project Team members and any other employees or subconsultant assigned to the Project by the Consultant.
- d. Discharge, Reassign, Replacement.
1. Consultant acknowledges the Project Team is comprised of the same persons and roles for each as identified in Consultant's response to the solicitation.
2. Consultant will not discharge, reassign, replace or diminish the responsibilities of any member of the Project Team that has been approved by the City without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in advance in writing by the City.
3. The Consultant will maintain an adequate and competent staff of qualified persons throughout the performance of this Contract as necessary for acceptable and timely completion of the Services. Consultant will promptly remove any of the member(s) of the Project Team at the City's request if a team member's performance does not equal or exceed the level of

competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project. Any proposed team member replacement must be approved in advance in writing by the City.

2.2 City Project Manager. The City will designate a City Project Manager to act on behalf of the City during the term of this Contract. The City Project Manager has the authority to administer this Contract and shall monitor compliance with all terms and conditions herein. All requests for information from or decisions to be made by the City on any aspect of the Work shall be directed to the City Project Manager.

Section 3 Consultant's Services

3.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent with Project requirements, Scope of Work, City guidelines and other criteria in this Contract, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with other, including other consultants and contractors retained by the City.

3.2 Standard. Consultant must perform Services in accordance the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Contract. Consultant is to perform to the Services to the City's satisfaction, and in a manner that ensures that the Project is completed timely and efficiently in accordance with the Project time period prescribed by the City. All Services shall be executed by personnel skilled in their respective lines of work.

- a. Responsibility for Correction. It is agreed that the Consultant shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance of the Services.
- b. Investigation of Conditions. The Consultant warrants and agrees familiarity of the work that is required, is satisfied as to the conditions under which it is to perform and enters into this Contract based upon the Consultants own investigation.
- c. Preparation of Specifications by Persons Other than City Personnel. All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.

3.3 Licensing, Debarment and Suspension. Consultant warrants and certifies that:

- a. Consultant and its Subconsultants will hold all appropriate and required licenses, registrations permits, and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
 1. Neither Consultant nor any of its subconsultant are presently debarred, suspended, proposed for debarment, declared ineligible or otherwise legally excluded from contracting with any federal, state or local government entity; and
 2. Neither Consultant nor any of its subconsultant within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

3. Neither Consultant nor any of its subconsultant are presently indicted (or have been convicted) of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and
 4. Neither Consultant nor any of its subconsultant, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.
- b. City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.
 - c. Consultant must notify City immediately if there are any changes of information provided by Consultant or its subconsultants as it relates to the certifications required by section 3.3 during the Contract's duration. The failure of the Consultant to notify the City as required will constitute a material default under the Contract.

3.4 Coordination; Interaction

- a. Consultant will work in close consultation and cooperation with any and all other professionals retained by the City on the Project ("Coordinating Consulting Professionals").
- b. Subject to any limitations expressly provided in the Project Budget, Consultant will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City Project Manager as often and for durations as City reasonably considers necessary in order to ensure the timely delivery of Services and the successful completion of the Project.
- c. For projects not involving Coordinating Consulting Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

Section 4 Work Product/Equipment/Materials

- 4.1 Ownership. Upon receipt of payment for Services furnished, Consultant agrees to grant to City and will cause its Subconsultants to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all Architectural Work and engineering work as well as any other intellectual Work Product as may be applicable. This grant includes any right to derivative use of the materials. Consultant shall place the professional seal of Consultant on all plans and documents prepared in the performance of this Contract, if applicable. It is expressly understood that 4.1 is intended to deal with original designs, plans and specifications exclusively developed for the City by Consultant and is not intended to apply to standard details, systems and specifications developed and used by Consultant which shall remain the property of Consultant and may be used with other projects without City's consent.
 - a. This grant is effective whether the Work Product is on paper (e.g. "Hard Copy"), in electronic format, or in some other form.
 - b. Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party propriety rights.
 - c. It is expressly agreed by Consultant that the covenants in section 4 are irrevocable and perpetual.

4.2 Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.

4.3 City Use

- a. City may reuse the Work Product provided by Consultant and its subconsultant pursuant to this Contract at its sole discretion.
- b. In the event the Work Product is used for another project or modified by the City without further consultation with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product. In such case, City will also remove any seal and title block from the Work Product.

4.4 Confidentiality and Encryption

- a. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Consultant in connection with this Contract are confidential, proprietary information owned by the City. Except as specifically provided in this Contract, the Consultant shall not disclose data generated in the performance of the Services to any third person without the prior written consent of the City Manager.
- b. Personal identifying information, financial account information or restricted City information, whether electronic format or hard copy, are considered confidential information and must be secured and protected at all times to avoid unauthorized access. At a minimum Consultant shall ensure that all electronic transmissions of confidential data are encrypted and any cryptographic algorithm implementations used must have been validated by the National Institute of Standards and Technology (NIST). The use of proprietary encryption algorithms will not be allowed for any purpose. The export of encryption technologies is restricted by the U.S. Government.
- c. In the event that data collected or obtained by Consultant in connection with this Contract is reasonably believed to have been compromised, Consultant shall notify the City Attorney immediately. Consultant agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.
- d. Consultant agrees that the requirements of this section shall be incorporated into all Subconsultant agreements entered into by the Consultant. Any violation of this section may result in immediate termination of this Contract by the City without further notice.

Section 5 Contract Term

- 5.1 Unless as otherwise provided herein, the term of this Contract shall commence on the Effective Date of this Contract and shall continue until the completion of Services, but in any event no later than March 31, 2014 ("Term"). This Contract may be extended or renewed for successive additional one (1) year periods, not to exceed a total of five (5) years, subject to appropriations. The City has no obligation to extend or renew this contract, and any decision to do so is at the sole discretion of the City.
- 5.2 The term of the contract may be automatically extended to include the warranty period.
- 5.3 Consultant shall not commence work until Consultant receives a Purchase Order signed by the City of Goodyear Procurement Manager or designee.

Section 6 Compensation and Billings/Payments

- 6.1 Compensation. Consultant's compensation for the Project, including those Services furnished by its Subconsultants, will not exceed \$ _____, as specifically provided herein.

- 6.2 Change in Scope of Project. Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
- a. Adjustments to Compensation require a written amendment to this Contract and may require council approval.
 - b. Additional services which are outside the Scope of the Project contained in this Contract may not be performed by the Consultant without prior written authorization from the City.
- 6.3 Invoices. Consultant will invoice City on or before the 10th day of each month for Services provided under this Contract during the prior month. Invoices shall contain itemized hourly fees and specifically describe the Services performed, the name of the Contractor's personnel performing such Services, along with supporting documentation for all invoiced amounts.
- a. Review and Withholding. City's Project Manager will timely review and certify invoiced payment requests.
 1. If an invoice is rejected, the Project Manager will issue a written listing of the items not approved for payment.
 2. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.
 - b. No Advance Payments. Advance payments are not authorized. Payment will be made for only actual Services that have been received and accepted by the City.
 - c. Late Submission of Invoice. The City will not honor any invoices or claims which are tendered more than one (1) year after the last item of the account accrued.
- 6.4 Payment. City shall make every effort to process payments to Consultant within thirty (30) calendar days after the receipt of a complete, correct and approved invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the invoice or account.
- a. Payment may be subject to or conditioned upon City's receipt of:
 1. Completed work generated by Consultant and its Subconsultants; and
 2. Unconditional waivers and releases on final payment from all Subconsultants as City may reasonably request to assure the Project will be free of claims arising from required performances under this Contract.
- 6.5 Fund Appropriation Contingency. Funds may not presently be available for performance under this Contract beyond the current City's fiscal year starting July 1 and ending on June 30th of the following year. If payment for performance under this Contract extends into next fiscal year, the City's obligation to pay for such performance is subject to approval of future appropriations to fund this Contract by council action. The City shall have no legal liability to pay funds due for performance under the terms of the Contract until and unless funds are appropriated by legislative action.
- 6.6 Free on Board ("FOB") Destination. All prices are to be quoted F.O.B final destination, unless otherwise specified elsewhere in the solicitation.
- 6.7 Taxes. Consultant will be solely responsible for any and all tax obligations that may result from Consultant's performance of this Contract.

Section 7 Termination

7.1 Termination for Convenience

- a. City may terminate, or abandon any part of the Services, of this Contract for the convenience of the City, without cause and for any reason, by delivering a written Notice of Termination providing the effect date, which may not be less than 15 days following the date of service of the Notice of Termination.
- b. Upon receipt of notice, the Consultant shall, unless the Notice of Termination directs otherwise, immediately discontinue further Services and placing of orders for materials, facilities and supplies in connection with the performance of this Contract.
- c. In the event of termination, Consultant shall be paid only for Work performed prior to receipt of Notice of Termination including reimbursable costs then incurred, provided such work was performed in accordance with the Contract, less any setoff to which the City is entitled. Consultant shall not be entitled to any claim or claim of lien against Owner for any additional compensation or damages in the event of such termination and payment.
- d. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City. Approval must be in writing from the City Project Manager prior to any effort being expended.
- e. The Consultant shall appraise the services completed prior to receiving notice of the termination and deliver to the City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the Consultant under the contract, entirely or partially completed, together with all unused materials supplied by the City.

7.2 Termination for Cause

- a. Either Party may terminate this Contract in the event of a material breach of the Contract by the other. Prior to such termination, the Party termination will give to the other Party written notice of the breach and intent to terminate. If the Party committing the breach fails to cure any breach of Contract within fifteen (15) days after receipt of written notice specifying the breach, then the Party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
- b. Notwithstanding paragraph 7.2 (a), the City may terminate this Contract immediately by written notice to the Consultant upon denial, suspension, revocation, or non-renewal of any license, permit or certificate that the Consultant must hold to provide Services under this Contract.

7.3 Remedies

- a. In the event of a breach by the Contractor, the City may complete the work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay the City the amount of the reasonable excess.
- b. In addition to the remedies provided herein for a breach by the Consultant, the City shall also be entitled to any other equitable and legal remedies that are available.
- c. If the City breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

Section 8 Risk of Loss and Liability

- 8.1 Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify, save and hold harmless the City of Goodyear, its elected officials, officers, employees, agents, boards and

representatives (hereinafter referred to as "Indemnatee") for, from and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorney's fees and Litigations Expenses asserted by a third-party (i.e. a person or entity other than City or Consultant) and that is caused by, related to, arises out of, or alleged to have resulted from, in whole or in part, any negligent, reckless or intentional acts, errors, fault, mistakes, omissions, work, or service of the Consultant, its directors, officers, employees, agents, representatives, or any tier of subcontractors or any other person for whose acts, errors, fault, mistakes omissions, work or service the Consultant may be legally liable in the performance of this Contract.

The Indemnification provided hereunder shall extend to claims arising out of, or recovered under, Arizona's Workers' Compensation Law or the failure of Consultant to conform to any applicable and appropriate federal, state, or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the Indemnatee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Consultant from and against any and all claims. It is agreed that the Consultant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

In consideration of the award of this contract, Consultant agrees to waive all rights of subrogation against Indemnatee for claims arising from the work performed by Consultant, its directors, officers, employees, agents, representatives, or any tier of subcontractors pursuant to this Contract. This indemnification provision shall survive the expiration or earlier termination of this Contract.

- 8.2 Indemnification – Patent, Copyright and Trademark. To the fullest extent permitted by law, Consultant shall defend, indemnify, save and hold harmless the City, its elected officials, officers, employees, agents, boards and representatives (hereinafter referred to as "Indemnatee") individually and collectively at consultant's own expense, from and against any liability, including any and all expenses, losses, royalties, profits, judgments, damages, including all legal costs and expenses, court costs and attorney fees, for infringement of any patent, copyright or trademark or other proprietary rights of any third parties arising out of, related to or resulting from this Contract or use by the City of materials furnished or Services performed under this Contract. It is expressly agreed by Consultant that these covenants are irrevocable and perpetual. The City may be represented by, and actively participate through, its own counsel in such suit or proceedings, if it is so desires.
- 8.3 Title and Risk of Loss. The title and risk of loss of material or services shall not pass to the City until the City actually receives and accepts the materials or services at the point of delivery; and such loss, injury or destruction shall not release the Consultant from any obligation hereunder.
- 8.4 Acceptance. All material or services are subject to final inspection and acceptance by the City. Material or services failing to conform to the specifications of this Contract shall be held at Consultant's risk and may be returned to the Consultant. If returned, all costs are the responsibility of the Consultant.
- 8.5 Loss of Materials. The City does not assume any responsibility, at any time, for the protection of or for the loss of materials, from the execution of this Contract until the final acceptance of the work by the City.
- 8.6 Work Performed at Consultant's Risk. Consultant shall take all precautions reasonably necessary and shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall utilize all protections reasonably necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
- 8.7 Damage to City Property. Consultant shall perform all work so that no damage to any City buildings or property results. Consultant shall repair any damage caused to the satisfaction of the City at no cost to the City. Consultant shall take care to avoid damage to adjacent finished materials that are to remain. If

finished materials are damaged, Consultant shall repair and finish in a manner which matches existing material as approved by the City at the Consultant's expense.

- 8.8 Force Majeure. Neither Party shall be in default by reason of any failure in performance of this Contract if such failure arises out of causes beyond their reasonable control and without the fault or negligence of said Party including, unforeseeable Acts of God; terrorism or other acts of public enemy; war and epidemics or quarantine restrictions.

If either Party is delayed at any time in the progress of the Work by force majeure, the delayed Party shall notify the other Party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in the notice. The notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed Party from performing in accordance with this contract.

Section 9 Insurance

- 9.1 Consultant and any Subconsultants. Consultants, and each subconsultant, performing work or providing materials related to this Contract must procure and maintain insurance coverage's described below (collectively referred to herein as the "Consultant's Policies") against claims for injury to persons or damage to property which may arise from or in connection with this Contract by the Consultant, agents, representatives, employees, and subconsultants. The obligation to procure and maintain insurance continues until all of Consultant and subconsultant's obligation under this Contract has been discharged, including any warrant periods,

- a. Insurer Qualifications. Without limiting any obligations or liabilities of the Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance requirements with insurance companies duly licensed by the State of Arizona with a current A.M. Best Company, Inc. rating of not less than A- or above and a category rating of not less than "8" with policies and forms satisfactory to the City. Use of alternative insurers requires prior written approval from City. Insurance provided by Consultant shall be primary. Consultant's failure to maintain insurance as specified herein may result in termination of this Contract at the City's option.
- b. No Representation of Coverage Adequacy. The insurance requirements herein are *minimum requirements* for this Contract and the City in no way warrants that the minimum requirements contained herein are sufficient to protect Consultant from liabilities that might arise out of the performance of the Work under this Contract by Consultant, its agents, representatives, employees or subcontractors and the Consultant is free to purchase additional insurance. Any insurance coverage carried by the City or its employees is excess coverage and not contributory coverage to that provided by the Consultant. The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnification obligations under this Contract.
- c. Certificates of Insurance/Receipt/Endorsement.
 1. Endorsement. Insurance coverage, other than Workers' Compensation and Professional Liability, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insured and **be properly endorsed**. Such certificates shall identify this Contract number and shall provide for not less than thirty (30) days advance Notice of Cancellation or Termination.
 2. At time of the execution of this Contract, Consultant must deliver to the Goodyear Office of Procurement, City of Goodyear, 190 N. Litchfield Road, Goodyear, Arizona 85338 certificates

of insurance for each of Consultant's policies, which will confirm the existence or issuance of Consultant's policies in accordance with the provisions of this Section, and copies of the formal endorsements of Consultant's policies in accordance with the provisions of this Section.

3. The City reserves the right to review any and all of the insurance policies and/or an endorsement required by 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 Contract or failure to identify any insurance deficiency shall not relieve the Consultant from, nor be construed or deemed a waiver of its obligation to maintain the required insurance at all times during the performance of the Contract.
4. All insurance required herein shall be maintained in full force and effect until all Services required to be performed under the terms of the Contract are satisfactorily completed and formally accepted. Consultant's failure to secure and maintain all required insurance policies will constitute a material default under this Contract.

d. Notice of Cancellation. Each certificate for each insurance policy required by this Section shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage by endorsement to limits lower than those required by this Contract except after prior written consent from the City.

9.2 Workers' Compensation and Employer's Liability. Consultant must maintain a workers' compensation and employer's liability policy sufficient to cover obligations imposed by federal and state statutes having jurisdiction over its employees engaged in the performance of any Services herein.

9.3 Automobile Liability. Yes No. Consultant and Subconsultants shall maintain commercial and business automobile liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000 each occurrence regarding any owned, hired, and non-owned vehicles assigned to or used in performance of Services herein. Coverage will be at least as broad as coverage Code 1 "any auto" under Insurance Service Office policy form CA 00 01 10 01 or any replacement thereof.

9.4 Commercial General Liability. Consultant and Subconsultants shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000, for each occurrence and \$2,000,000 in the aggregate. The policy shall include coverage for bodily injury, property damage, personal injury, products and contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office policy form CG 00 01 07 98 or any replacement thereof. The certificate of insurance for the Commercial General Liability insurance policy shall expressly cover the indemnification obligations of indemnification required by this agreement. A general liability insurance policy may not be written on a "claims made" basis. **These limits may be met through a combination of primary and excess liability coverage.**

9.5 Professional Liability. Yes No. Consultant and Subconsultants will maintain Professional Liability insurance covering negligent errors and omissions arising out of the services performed by the Consultant or any person employed by him, with a limit of not less than \$1,000,000 each claim and \$2,000,000.00 annual aggregate limit.

9.6 Umbrella/Excess Liability. Yes No. Consultant and Subcontractor shall maintain Umbrella and Excess Liability insurance with an 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. Primary per occurrence coverage may be used to fulfill this requirement.

9.7 Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.

- 9.8 Valuable Papers. Yes No. Valuable Papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of the Consultant used in the completion of this contract.
- 9.9 Other Contractors or Vendors. Consultant shall ensure that its subcontractors and/or vendors may be contracted with in connection with the Project procure and maintain insurance coverage as is appropriate for their particular contract and properly endorse the City as an additional insured.

Section 10 Contract Interpretation

- 10.1 Disputes, Governing Law, Attorney Fees. Should any dispute, misunderstanding or conflict arise as to the terms or provisions contained in this Contract, the matter shall first be referred to the City, and the City shall determine the term or provision's true intent and meaning.

This Contract shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the State of Arizona, without regard to choice of law or conflicts of laws principles thereof. Any action arising out of this Contract shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the U.S. District Court located in Phoenix, Maricopa County, Arizona. The prevailing Party shall be reimbursed by the other Party for all attorney fees and all costs and expenses, including but not limited to all service of process, filing fees, court and court report costs, investigative costs, and expert witness fees which are incurred in any legal proceeding whatsoever arising out of this Contract, including, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearing.

- 10.2 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party the Contract shall forthwith be physically amended to make such insertion or correction.
- 10.3 Parole Evidence. This Contract is intended by the Parties to be the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in trade shall be relevant to contradict, supplement or explain any term used in this Contract.
- 10.4 Severability. If any provision in this Contract or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 10.5 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following shall prevail in the order set forth below:
1. Standard Terms and Conditions
 2. Special Terms and Conditions
 3. Specifications/Scope of Work
 4. Solicitation, Instructions to Offerors (including other documents referenced or included)
 5. Fee Schedule/Price Sheet
 6. Attachments, Addendum and Exhibits
- 10.6 Integration. This Contract contains the full agreement of the Parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.
- 10.7 Independent Contractor. Each Party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee, agent, subcontractor or subconsultant of

one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Consultant is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Consultant should make arrangements to directly pay such expenses, if any.

- 10.8 Non-Waiver Monies Due. The City as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, Consultant agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- 10.9 Ambiguities Not Held Against Drafter. This Contract having been freely and voluntarily negotiated by all parties and the rule of contract construction that ambiguities, if any, in any term or condition of an agreement are held against the drafter of the agreement is not applicable to this Contract.
- 10.10 Non-Waiver Contract Provision. The failure of either Party to enforce any of the provisions of this Contract or to require performance of the other Party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Contract or any part thereof, or the right of either Party to thereafter enforce each and every provision.
- 10.11 Cooperation and Further Documentation. The Consultant agrees to provide the City all duly executed documents as shall be reasonably requested by the City to implement the intent of this Contract.

Section 11 Contract Administration and Operation

- 11.1 Conflict Of Interest/Third Parties. Consultant shall provide written notice to the City as set forth in this section, of any work or Services performed by the Consultant for third parties that, to the extent that the Consultant is aware, involves or is associated with any real property or personal property owned or leased by the City or which may be adverse to the City. Actions that are considered to be adverse to the City include but are not limited to:
- a. Using data acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;
 - b. Testifying or providing evidence on behalf of any third party in connection with an administrative or judicial action against the City; and
 - c. Using data to produce income for the Consultant, its subcontractors or employees independently of performing the services under this Contract, without the prior written consent of the City.

Notice shall be given seven (7) days prior to commencement of the Services by the Consultant for a third party. The Consultant's failure to provide a written notice and disclosure of the information as set forth in this section shall constitute a material breach of Contract. Written notice and disclosure shall be sent as provided in Section 13.

- 11.2 Conflict Audit. Within thirty (30) days of being requested to do so, Consultant agrees to provide the City an itemized summary of any and all gifts a Consultant, its directors, officers, managers, employees, agents and/or representatives have made to any City employee during the year prior to the date of the Contract through the date of the request. The summary shall include the date the gift was made, a description of the gift, the City employee(s) that received the gift, and the value of the gift. The summary shall be signed and its truthfulness certified by Consultant. For purposes of this section the terms "Gift" means anything of value that is provided to the employee and includes, by way of example, but not limitation, meals, free use of vacation homes, low interest or no interest loans, tickets to sporting events, tickets to charitable events, entertainment expenses, travel expenses, drinks, and the like. The failure to comply with any request made pursuant to this section and/or the submission of a summary that contains material misrepresentations constitutes grounds for debarment and the refusal to allow Consultant to participate in any future contracts with the City.

11.3 Audit of Records. Consultant shall retain, and shall contractually require each and every subcontractor that performs any Work under this Contract, all books, accounts, reports, files and any and all other records relating to the contract (hereinafter referred to as "Contract Documents") for six (6) years after completion of the Contract. City, upon written request and at reasonable times, shall have the right to review, inspect, audit and copy all Contract Documents of the Consultant and any subcontractors. Consultant shall produce the original Contract Documents at City Hall, currently located at 190 N. Litchfield Road, Goodyear, Arizona, or at such other City facility within the City as designated by the City in writing. If approved by City Attorney in writing, photographs, microphotographs, or other authentic reproductions may be maintained instead of original Contract Documents.

11.4 Audit/Billing and Expenses. The City reserves the right to request supporting documentation for all hourly amounts or reimbursable expenses charged to the City. Such records will be subject to audit at any time during the term of this Contract and for a period not to exceed two (2) years after any amount is billed. Within thirty (30) days of receiving a request, the Consultant will furnish to the City original invoices to support all charges and complete payroll records to support such hourly labor charges. The City reserves the right to audit any other supporting evidence necessary to substantiate charges related to this Contract, both direct and indirect costs, including overhead allocations if they apply to hourly costs associated with this Contract. If requested by the City, the Consultant will provide supporting records electronically in addition to a hard copy.

- a. If the audit reveals overcharge, the Consultant will reimburse the City upon demand for the amount of such overcharges plus interest thereon from the date paid by the City through the date of reimbursement. If the overcharges exceed 5% of Consultant's compensation, then Consultant shall also reimburse the City for the cost of the audit.

The Consultant shall include a similar provision in all of its agreements with subcontractor providing services under this Contract to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the subcontractor records to verify the accuracy of any similar amounts charged to the City.

11.5 Advertising. Consultant and its subcontractors shall not advertise or publish new releases concerning this Contract or any services provided to the City without prior written consent of the City Attorney.

11.6 City Marks. The Consultant and all subcontractors shall not use any trade name, trademark, service mark, or logo of the City (or any name, mark or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.

11.7 Compliance. Consultant certifies and warrants Consultant and its Subconsultants are in compliance with the following:

- a. All Services provided under this Contract will be furnished in compliance with all applicable federal, state, county, and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by the City.
- b. Non-Discrimination.
 1. Consultant and all subcontractors will not discriminate against any person on the basis of race, color, religion, age, gender, or national origin in the performance of this Contract, and shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-354 as amended.
 2. Consultant and its Subconsultants understand and agree to comply with the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989 and Arizona Executive Order 2009-09 as amended in performing this Contract and to permit the City to verify such compliance.

- c. E-Verify.
 - 1. Consultant and its subcontractors shall comply with all applicable provisions of the Federal Immigration and Nationalization Act and A.R.S. § 41-4401 and A.R.S. § 23-214, which requires compliance with federal immigration laws by state employers, contractors and subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.
 - 2. Pursuant to A.R.S. § 41-4401, the City may request verification of compliance from Consultant and any of its subcontractors under this Contract. The City reserves the right to confirm compliance. Should the City suspect or find that the Consultant or any of its subcontractors are not in compliance, the City may pursue any and all remedies allowed by law, including, but not limited to suspension of Services, termination of the Contract for breach or default, and suspension and/or debarment of the Consultant. All costs necessary for compliance shall be solely borne by the Consultant.
 - d. Evidence of lawful presence in the United States. In accordance with A.R.S. §§ 1-501, 1-502 and as a condition of entering in this Contract, a natural person shall execute an affidavit certifying this fact and present one of the identification documents contained therein (“Identification Documents”) to verify their lawful presence in the U.S. Failure to execute the affidavit upon submittal of the Contract documents shall be considered nonresponsive and shall result in rejection of the submitted response and automatic cancellation of this Contract. Companies, corporations, and limited partnerships (anyone other than an individual) are not required to complete and submit this form prior to receiving a public benefit.
 - e. Sudan/Iran. Consultant, on behalf of itself and its Subconsultant retained to perform work under this Contract certifies, to the extent applicable under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.* that neither has, or will have during the term of this Contract, "scrutinized" business operations, as defined in the preceding statutes in the countries of Sudan or Iran.
- 11.8 Continuation during Disputes. Consultant agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Service Provider shall continue to perform the obligations required of the Consultant during the continuation of any such dispute unless enjoined or prohibited by the City or an Arizona Court of competent jurisdiction.
- 11.9 Cooperative Statement. This contract shall be for the use of the City of Goodyear. In addition, specific eligible specific political subdivisions and nonprofit educational or public health institutions may also participate at their discretion. Any eligible agency may elect to participate (piggyback) on this contract if the Consultant agrees to do so.
- 11.10 Captions. The captions used herein are for convenience only and are not a part of this Contract and do not in any way limit or amplify the terms and provisions hereof.
- 11.11 Bankruptcy. This Agreement, at the option of the City, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of the Consultant.
- 11.12 Public Records. Consultant acknowledges that all documents provided to the City may be subject to disclosure pursuant to Arizona Public Records laws.

SECTION 12 CONTRACT CHANGES

- 12.1 Modification. No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the Parties with authority to do so. This section does not prohibit the City from unilaterally extending the contract term.
- 12.2 Successors and Assigns. This Contract is binding on the parties’ respective partners, successors, assigns, and legal representatives. Consultant will not assign, sublet, or transfer its right or interest in

this Contract nor monies due, in whole or in part, or delegation any duty of Consultant without the prior written consent of the City. Any assignment or delegation made in violation of this section shall be void. In no event does this Contract create any contractual relationship between the City and any third party.

- 12.3 Third Party Beneficiary. Nothing under this Contract shall be construed to give any rights or benefits in the Contract to anyone other than the City and the Consultant, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of City and the Consultant, and not for the benefit of any other Party.
- 12.4 Authorized Changes. The City reserves the right at any time to make changes in any one or more of the following: (i) specifications; (ii) methods of shipment or packing; (iii) place of delivery; (iv) time of delivery; and/or (v) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or deliver schedule, or both. Any claim for adjustment shall be deemed waived unless asserted in writing within thirty (30) days from the receipt of the change. Prior increases or extensions of delivery time shall not be binding on the City unless evidenced in writing and approved by the City.
- 12.5 Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the Service or Work specified herein without the advance written approval of the City.
- 12.6 Contingent Fees. Consultant warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Goodyear has any interest, financially, or otherwise, in the Consultant's business/firm. For breach or violation of this warranty, the City of Goodyear shall have the right to annul this Contract without liability or at its discretion to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 12.7 Liens. Consultant shall hold the City harmless from claimants supplying labor or materials to the Consultant or its subcontractors in the performance of the Services required under this Contract. Consultant shall provide written certification that all liens against materials and labor have been satisfied before the City will make final payment.
- 12.8 Notice of Action/Suit. Contractor shall give Customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Contractor's performance under this Agreement.

SECTION 13 GENERAL

- 13.1 Survival. Sections 6, 7, 8, 9, 10 and 11 will survive the completion, termination and/or abandonment of this Contract.
- 13.2 Compliance with Applicable Law Consultant shall comply with all applicable federal, state and local laws, codes and regulations; including all applicable building regulations, license and permits requirements.
- 13.3 Right of Assurance. Whenever one Party to this Contract in good faith has reason to question the other Party's intent or ability to perform they may demand that the other Party give written assurance of this intent and ability to perform. In the event that the demand is made and no written assurance is given within seven (7) days, the demanding Party may treat this failure as an anticipatory repudiation of this Contract.

- 13.4 Non-Performance. In the event of nonperformance under this Contract, the City, after seven (7) days written notice to the Consultant, shall have the right to obtain from other sources such Services as may be required to accomplish the work not performed, and it is agreed that the difference in cost, if any, shall be paid by the Consultant.
- 13.5 Non-Exclusive Remedies. The rights and remedies of the city under this contract are non-exclusive.
- 13.6 Default in Any Installment to Constitute Breach. Each installment or lot of this Contract is dependent on every other installment or lot and a delivery of non-conforming goods or services or a default of any nature under one installment or lot will impair the value of the whole Contract and constitutes a breach of the Contract as a whole.
- 13.7 Time is of The Essence. Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence. The City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Consultant.
- 13.8 Non-Exclusive Contract. Any subsequent Contract resulting from the solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like Services from another source when necessary and determined appropriate by the City's Procurement Manager.
- 13.9 Strict Performance. Failure of either Party to insist upon the strict performance of any item or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this Contract or by law shall not be deemed a waiver of any right of either Party to insist upon the strict performance of the Contract.
- 13.10 Conflict of Interest. This Contract is subject to cancellation by the City, without penalty or further obligations, pursuant to the provisions of A.R.S. § 38-511.
- 13.11 Notices. Unless otherwise provided herein, demands under this Contract will be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally delivered to the Party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified postage prepaid and properly addressed as follows:

To City:
Troy Tobiasson
190 N. Litchfield Road
Goodyear, AZ 85338

To Consultant:

Copy to:
City Attorney
City of Goodyear
190 N. Litchfield Road
Goodyear, AZ 85338

13.13 This Contract shall be in full force and effect only when it has executed by duly authorized City officials and the duly authorized agent of the Consultant.

END OF STANDARD TERMS AND CONDITIONS

SPECIAL TERMS AND CONDITIONS
CONTRACT FOR PROFESSIONAL SERVICES
CON-13-2208

END OF SPECIAL TERMS AND CONDITIONS