

PHX DVT GYR

 **CITY OF PHOENIX AVIATION DEPARTMENT**

Request for Proposals for Photography Services

Schedule

ACTIVITY All times are local Phoenix time	DATE
Issue Request for Proposals (RFP)	July 24, 2014
Submittal of Written Questions by 2:00 p.m.	August 21, 2014
Responses to Written Questions	August 28, 2014
Proposal Deadline by 2:00 p.m.	September 11, 2014
Evaluation of Proposals	September 25, 2014
Short List and Interviews (if applicable)	October 2, 2014
Agreement Award Recommendation to Phoenix City Council	November 19, 2014
Commencement of Agreement	February 1, 2015

Submit requests for alternate formats to:

Alice Stallings, Procurement Officer
City of Phoenix Aviation Department
Phoenix Sky Harbor International Airport – PHX
Terminal 3 - Level 3 East Mezzanine
3400 East Sky Harbor Boulevard, Suite 3300
Phoenix, AZ 85034-4405
(602) 273-2051 (TEL) / (800) 781-1010 (TTY)
avn.contract.services@phoenix.gov
<http://www.phoenix.gov/solicitations>

This RFP does not commit the City to award an agreement.

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I. INTRODUCTION

A. Introduction

The City of Phoenix (City) is seeking photography services for Phoenix Sky Harbor International Airport (PHX) and its reliever airports, Phoenix Deer Valley Airport (DVT) and Phoenix Goodyear Airport (GYR), as specified in detail in **Attachment C**. PHX served more than 40 million passengers in 2013 through its three (3) terminals.

B. Term and Contractual Relationship

The term of the agreement, which is included as **Attachment C**, will be for one (1) year, with four (4) options to extend the term for one (1) year each, which options may be exercised at the sole discretion of the Aviation Director.

Proposers are responsible for reading the agreement and submitting any questions about it in accordance with the process listed in **Section I(C)**. By submitting a proposal, each proposer agrees it will be bound by the agreement, which may be modified by the City before it is signed by the recommended proposer.

C. Question & Answer (Q&A) Process

Proposers are strongly encouraged to read this RFP in its entirety. Questions about this RFP, including the agreement and all other attachments, must be submitted in writing to avn.contract.services@phoenix.gov before the written questions deadline listed on page 1. The City will respond to all written questions in writing.

D. Notification

Potential proposers that request such notification in writing will be notified by e-mail when documents related to this RFP are available at <http://www.phoenix.gov/solicitations>.

E. Proposer Exceptions

The City will award this agreement on a fair and competitive basis and will not accept any changes to the material provisions or requirements of this RFP. Proposers that take exception to, add to, or subtract from any material provision or requirement of this RFP may be considered as attempting to change the provisions or requirements of this RFP to gain an unfair

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advantage over other proposers. Proposals including such exceptions or changes, or that are conditional, are subject to disqualification as non-responsive proposals. Nonmaterial exceptions or changes will only be considered if approved by the City during the Q&A process. No new exceptions or changes will be considered after the recommended proposer has been identified.

F. Changes to this RFP

Changes to this RFP will be in writing as an addendum and posted at <http://www.phoenix.gov/solicitations>. Proposers may not rely on any statement by any City employee, consultant, or official regarding this RFP unless the statement made is posted as an addendum or as part of the Q&A process.

G. Airport Security

All individuals assigned to work at PHX as a result of this RFP must pass a fingerprint-based Criminal History Records Check and obtain an Aviation-issued security badge. The successful proposer must comply with all airport security requirements. Visit: <http://skyharbor.com/pdf/New-Company-Info.pdf> for current information.

II. SCOPE OVERVIEW

As further specified in **Attachment C, Exhibit A**, the successful proposer will provide photography services on an as-needed basis.

III. PROPOSAL INSTRUCTIONS

A. Delivery of Proposals

Each proposer must submit the following in a sealed package marked with the proposer's name and the name of this RFP:

1. 1 original proposal
2. 1 electronic copy of the proposal in Microsoft Word or Excel on a CD
3. 5 hard copies of the proposal

Proposals must be received by Aviation Department's administrative receptionist at the address listed on page 1 by the proposal deadline listed on page 1. Proposals received after the deadline will be disqualified as non-responsive and rejected.

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B. Form of Proposal

Proposals must conform to the following format. Proposals that are incomplete; conditional; obscure; or that contain additions not requested, changes or exceptions to material provisions or requirements of this RFP; or irregularities of any kind, are subject to disqualification as non-responsive.

Proposals are limited to ten (10) double-sided, letter-size pages typed in 12-point Arial font and must be stapled or clipped. The pages of each proposal must be numbered.

Each proposal must include all the following:

- 1. Notarized Affidavit (Attachment A)**
- 2. Fee Schedule (Attachment B)**
- 3. Qualifications & Experience Statement**

Each proposer must provide sufficient documentation, including résumés, to demonstrate the proposer's qualifications and experience providing photography services as described in **Attachment C, Exhibit A**.

Each proposer must further demonstrate in its proposal its ability to provide 100% of all services required under the agreement without the use of a subcontractor.

4. Work Samples

Each proposer must provide a portfolio with samples of proposer's work.

IV. PROPOSAL EVALUATION

A. Evaluation Criteria

All responsive proposals will be evaluated based on the following criteria.
This is a best-value-to-the-City procurement.

Fees	0-30 points
Qualifications & Experience	0-25 points
Quality, Effectiveness and Variety of Work Samples	0-45 points

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B. Evaluation Panel

If applicable, the Aviation Director will appoint an evaluation panel to evaluate all responsive proposals and recommend a proposer to be awarded the agreement resulting from this RFP. The Aviation Director may accept the evaluation panel's recommendation and submit it to the Phoenix City Council for approval, or he may reject the recommendation.

The evaluation panel may interview the proposers or may evaluate the proposals solely on the materials submitted by the proposal deadline. The evaluation panel may interview all proposers or create a short list of proposers to interview. A short list of proposers, when used, is a list of proposers identified by the evaluation panel as those most likely to be successful based on this RFP's evaluation criteria. The evaluation panel may consider information from the interviews that clarifies the written proposals.

The evaluation panel will score the proposals by consensus based on the evaluation criteria. The City will maintain the consensus scoring for each criterion for each proposer. The City does not retain individual panelists' scores.

V. GENERAL TERMS AND CONDITIONS OF THE PROPOSAL

A. Transparency Policy

Beginning on the date the RFP is issued and until the date the agreement is awarded or the RFP is withdrawn, all persons or entities that respond to the Request for Proposals for Photography Services, including their employees, agents, representatives, proposed partner(s), subcontractor(s), joint venturer(s), member(s), or any of their lobbyists or attorneys (collectively for this **Section V(A)** only, the proposer), will refrain from any direct or indirect contact with any person (other than the Procurement Officer identified on page 1) who may play a part in the selection process, including members of the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department Heads, members of the Phoenix Aviation Advisory Board, the Mayor and other members of the Phoenix City Council. As long as the RFP is not discussed, proposers may continue to conduct business with the City and discuss business that is unrelated to the RFP with City staff who are not involved in the selection process.

A proposer may discuss its proposal or the RFP with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer identified on page 1, conducted in

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person at 200 West Washington, Phoenix, Arizona 85003, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful proposer, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal evaluation panel or procurement authority must be provided in writing to all prospective proposers.

This policy is intended to create a level playing field for all proposers, assure that agreements are awarded in public, and protect the integrity of the selection process. **Proposers that violate this policy shall be disqualified.**

B. Affirmative Action Plan

The successful proposer certifies its compliance with federal affirmative action requirements by signing the agreement resulting from this RFP.

C. Equal Opportunity

The City extends to all proposers an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of small business enterprises (SBEs) whenever practical. Proposers are encouraged to contact the City's Equal Opportunity Department at (602) 262-6790 or <https://www.phoenix.gov/eod/programs/businessdirectory> for assistance identifying SBEs.

D. Award Recommendation

All award recommendations will be posted at <http://www.phoenix.gov/solicitations>. When the City posts the award recommendation, the procurement file for this RFP will be available upon request for proposers to review. The procurement file consists of the RFP, advertising documents, proposals, and any addenda, evaluation panel consensus scoring, evaluation process documents, pre-proposal meeting documents, Q&A, and signed conflict of interest statements used in the process.

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E. Disclosure of Confidential and Proprietary Information

All materials submitted by proposers are the property of the City and become a matter of public record available for review pursuant to Arizona law. Each proposer must conspicuously mark each proposal page that contains information the proposer deems confidential or proprietary (collectively Proprietary Information).

If the City receives a request to review or disclose Proprietary Information, the City will notify the affected proposer in writing. An affected proposer has seven (7) calendar days from the date of the City's notice to obtain and deliver to the Procurement Officer listed on page 1 a court order preventing such disclosure. If the affected proposer has previously authorized disclosure by the City, the City will release the Proprietary Information as part of the Procurement File. The protest period will be extended seven (7) calendar days from the date the City discloses the Proprietary Information or the date of the court order.

F. City's Reservation of Rights

The City may:

1. Accept or reject any or all proposals in whole or in part;
2. Cancel this RFP in whole or in part;
3. Negotiate any proposal elements in a manner that does not create an unfair advantage for any proposer;
4. Reissue this RFP with or without modification;
5. Waive any defects in any proposal or the procurement process; and
6. Take any other legal action deemed to be in the City's best interest.

G. City's Right to Disqualify for Conflict of Interest

The City may disqualify a proposal if the proposer has a real or apparent conflict of interest disclosed in its proposal or discovered from any other source. During the term of the agreement resulting from this RFP, the successful proposer's employees may not be involved in any other Aviation-related business, including as an employee, owner, partner, or consultant, which presents a real or apparent conflict of interest. All determinations regarding conflicts of interest will be made at the sole discretion of the Aviation Director, whose decision is final and is not subject to **Section V(K)**.

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H. Proposer-Incurred Costs

All costs incurred by the proposer in connection with this RFP shall be borne solely by the proposer. Under no circumstances shall the City be responsible for any costs associated with the proposer's proposal or the RFP process.

I. City's Sole Determination of Responsiveness and Responsibleness and Right to Investigate

Proposals will be reviewed for documentation of qualifications and experience, completeness, and compliance with the RFP requirements. The City reserves the sole right to determine responsiveness and responsibleness, which includes the City's determination of the proposer's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

The City's determination as to whether a proposer is responsible will be based on the information furnished by the proposer, interviews (if any), and any other sources the City deems appropriate. Award of the agreement resulting from this RFP will not be made until such investigations, which each proposer agrees to permit by submitting its proposal, are made by the City as it deems necessary.

J. Proposer Certification and Affidavit

By submitting a proposal, each proposer certifies it has not paid or agreed to pay any fee or commission, or any other item of value, to any employee, official or current contracting consultant of the City contingent on the award of an agreement.

In compliance with Arizona Revised Statutes §§ 1-501 and 1-502(D), if the successful proposer is a sole proprietorship or an individual, the successful proposer must submit a completed Affidavit of Lawful Presence prior to the award of any agreement. This affidavit is posted at <http://www.phoenix.gov/documents/lawfulpresence.pdf>.

Proposers unable to comply with any required certifications or affidavits may be disqualified.

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K. Protests

A proposer that submits a proposal that is disqualified may challenge the disqualification by filing a protest within seven (7) calendar days of the date of the City's notice of disqualification.

An unsuccessful proposer may challenge an award recommendation by filing a protest within seven (7) calendar days after the award recommendation has been posted at <http://www.phoenix.gov/solicitations>. Proposers that have had their proposals disqualified may not protest an award recommendation.

All protests must be in writing, filed with the Procurement Officer listed on page 1, and include all of the following:

1. Name of the RFP challenged;
2. Name, address and telephone number of the protester;
3. Detailed statement of the legal and factual grounds of the protest, including copies of relevant documents;
4. Form of relief requested; and
5. The signature of the protester or its representative.

The Aviation Director will not review any supplements or amendments to a proposer's original protest or any additional protests submitted by the same proposer. The Aviation Director will issue a written decision within 14 calendar days of the protest filing. The Procurement Officer will provide the recommended proposer copies of the protest and the Aviation Director's written decision.

L. Execution of the Agreement

The City will send the final agreement to the recommended proposer. Within 30 days from the date the agreement was sent, the recommended proposer must sign and submit the final agreement to the City. If the City does not receive the signed agreement and all other required documentation from the recommended proposer within 30 days, the City may request City Council approval to award the agreement to the next highest qualified proposer.

If the recommended proposer is subject to regulation by the Arizona Corporation Commission (ACC), it must be authorized to transact business in Arizona and be in good standing with the ACC at the time it signs the agreement.

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ATTACHMENT A

AFFIDAVIT

Assurances

The undersigned proposer hereby submits to the City of Phoenix (City) the enclosed proposal based upon all terms and conditions set forth in the City's RFP and referenced materials. Proposer further specifically agrees hereby to provide services in the manner set forth in the proposal submitted by proposer.

The undersigned proposer acknowledges and states, under penalty of perjury, as follows:

1. The City is relying on proposer's submitted information and the representation that proposer has the capability to successfully undertake and complete the responsibilities and obligations submitted in its proposal and in the resulting agreement.
2. The City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by proposer.
3. Proposer has read and fully understands all the provisions and conditions set forth in the RFP documents, upon which its proposal is based.
4. The forms and information requested in the RFP are complete and made part of proposer's proposal. The City is not responsible for any proposer errors or omissions.
5. This proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the proposal deadline but may not be withdrawn after such date and time.
6. The City reserves the right to reject any and all proposals and to accept the proposal that, in its judgment, will provide the best quality of service to the City at reasonable rates.
7. This proposal is valid for a minimum of 120 days subsequent to the proposal deadline.
8. All costs incurred by proposer in connection with this proposal shall be borne solely by proposer. Under no circumstances shall the City be responsible for any costs associated with proposer's proposal or the RFP process.
9. Proposer has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of the RFP process.

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10. The contents of this proposal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this proposal.
11. To the best of the proposer's knowledge, the information provided in its proposal is true and correct and neither the undersigned proposer nor any partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.

Legal Status

1. In the past 7 years, have you personally, or any business with which you have been involved, been declared bankrupt, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court? If "Yes," provide date, court jurisdiction, case name, case number, amount of liabilities, amount of assets and the status of each occurrence. (Attach additional pages as necessary.)

Yes () No ()

2. Have you personally, or any business with which you have been involved, ever been a defaulter as surety upon any obligation to the City? If "Yes," provide details. (Attach additional pages as necessary.)

Yes () No ()

3. Are there any pending liens, claims or litigation in excess of \$1,000,000 involving proposer? If "Yes," provide detailed information regarding complaints about how the quality of proposer's services was unsatisfactory. (Attach additional pages as necessary.)

Yes () No ()

4. Has the proposer been involved in any lawsuits in the past 5 years? If "Yes," provide list. (Attach additional pages as necessary.)

Yes () No ()

5. Have any of the proposer's consulting agreements been terminated prior to their expiration terms, voluntarily or involuntarily, within the last 5 years? If "Yes," provide name, location, and date of the agreement(s). (Attach additional pages as necessary.)

Yes () No ()

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6. Has the proposer, or any corporation or other entity that has, directly or indirectly, a controlling interest in the proposer, or any subsidiary of the proposer or other entity in which the proposer has a controlling interest or any of the proposer's principals, officers, or directors ever been barred from bidding on federal, state, or local government agreements? If "Yes," provide the current status of such suspension or debarment proceedings. (Attach additional pages as necessary.)

Yes () No ()

7. Proposer intends to operate the business as a (check one):

Corporation	()	Partnership	()
Joint Venture	()	Sole Proprietorship	()
Limited Liability Company	()	Other	()

References

Proposer shall furnish the names and contact information for 3 clients for whom the proposer is furnishing or has furnished services similar to those described in this RFP. Do not list City of Phoenix employees or officials as references.

1. Company and Reference Name: _____
Address: _____
Telephone and E-Mail: _____
2. Company and Reference Name: _____
Address: _____
Telephone and E-Mail: _____
3. Company and Reference Name: _____
Address: _____
Telephone and E-Mail: _____

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Signature(s)

Name of Proposer (Legal Name): _____

Printed Name of Authorized Person*: _____

Title: _____

Business Address of Proposer: _____

Telephone and E-Mail: _____

Signature of Authorized Person: _____

*Proposal must be signed by an individual authorized to contractually bind the proposer.

Name of Joint Venture and/or
Subcontractor Partner (if applicable): _____

Printed Name of Authorized Person: _____

Business Address: _____

Telephone and E-Mail: _____

Signature of Authorized Person: _____

NOTARIZED

State of _____)

)

County of _____)

This Affidavit was subscribed and sworn to before me this _____ day of _____, 2014 by
_____ (full name of the affiant).

Notary Public (signature)

Affix notary seal

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ATTACHMENT B

FEE SCHEDULE

Proposer: _____

Each proposer must complete this Attachment B in its entirety to be considered responsive. Proposals received with incomplete or missing information for any of the fees, rates and estimates requested in this Attachment B will be disqualified as non-responsive and rejected. The City shall not be responsible for any proposer errors or omissions.

	DESCRIPTION	HOURLY RATE
1.	Photography Services	\$

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ATTACHMENT C

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

AGREEMENT NO. _____

This **AGREEMENT** is made and entered into this _____ day of _____, 20____, by and between the City of Phoenix, an Arizona corporation (hereinafter referred to as City), and _____, a _____ (hereinafter referred to as Consultant).

RECITALS

1. The City Manager of the City of Phoenix, Arizona, is authorized by the provisions of the City Charter to execute agreements for professional services.
2. The City desires to obtain the services that are specifically set forth in this Agreement.
3. The City procured these professional services in accordance with Administrative Regulation 3.10.
4. Consultant possesses the skills and expertise necessary to provide such services as desired by the City.
5. This Agreement is authorized by Ordinance S-_____ of the City Council dated _____.

NOW, THEREFORE, it is agreed by and between the parties as follows:

1. TERM OF AGREEMENT

- A.** This Agreement shall commence on _____, 20____, and the term shall be for _____ years, with _____ options to extend the term for one (1) year each, which options may be exercised at the sole discretion of the Aviation Director.
- B.** This Agreement shall terminate upon the earliest occurrence of any of the following:

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- 1) reaching the end of the term and any extensions exercised as set forth in Section 1(A);
- 2) completing the services set forth in the Scope of Services attached as **Exhibit A** (the Services);
- 3) payment of the maximum compensation under Section 2 of this Agreement, unless it is amended to allow additional compensation; or
- 4) termination pursuant to the provisions of this Agreement.

2. PAYMENT

- A.** The total amount to be remitted by the City to Consultant for all Services satisfactorily performed under this Agreement shall not exceed _____ Dollars (\$_____) per year. Under this Agreement, the City will pay for Services at the rate(s) specified in the Fee Schedule (**Exhibit B**) and that comply with the requirements for reimbursable expenses as outlined below, with no additional charges for overhead, benefits, local travel or administrative support. Payments shall be made in proportion to the Services performed and no more than ninety percent (90%) of the total contract price shall be paid before the work is totally completed and accepted by the City.
- B.** Consultant shall submit monthly invoices for Services rendered the prior month. Each invoice shall be accompanied with itemized receipts, if applicable. The invoice shall be submitted free of mathematical errors and/or missing supporting documentation. All appropriate documentation shall be provided that supports the charges reflected in the invoice. Upon finding of an error and/or missing documentation, the City shall return the invoice to Consultant. Consultant shall promptly resubmit the revised invoice to the City. Each revised invoice shall document the date that the revised invoice is submitted to the City. Requests for payment must be submitted with documentation of dates and hours worked, hourly rate charged, and a detailed description of the Services performed. Failure of the City to identify an error does not waive any of the City's rights.

Invoices shall be submitted to:

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- C.** Consultant shall demonstrate good judgment when incurring costs that are considered a reimbursable expense while conducting business for the City. All reimbursable expenses shall be pre-approved by the City, in writing, and be reasonable and prudent.

3. SCOPE OF SERVICES

Consultant will provide professional services that will be in accordance with the Scope of Services as set forth in **Exhibit A**, which may be supplemented with additional detail from time to time during the term of the Agreement, and that are satisfactory to the City.

4. INDEMNIFICATION OF THE CITY AGAINST LIABILITY

Consultant shall indemnify, defend, save and hold harmless the City and its officers, officials, agents, and employees (hereinafter referred to as Indemnitee) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as Claims) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Consultant or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of Consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Consultant from and against any and all claims. It is agreed that Consultant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, Consultant agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by Consultant for the City.

5. INSURANCE

Consultant and its subcontractors shall deliver to the City, prior to commencement of the Services provided under this Agreement, a certificate of insurance acceptable to the City in the amounts and form specified in **Exhibit C**. Failure of Consultant and its subcontractors to maintain insurance during the term of the Agreement, including renewal options, is a material breach and may result in immediate termination of this Agreement without notice. Insurance requirements are subject to periodic review and adjustment by the City.

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6. INDEPENDENT CONTRACTOR STATUS; EMPLOYMENT DISCLAIMER

- A.** The parties agree that Consultant is providing the Services under this Agreement on a part-time and/or temporary basis and is an independent contractor. Neither Consultant nor any of Consultant's agents, employees or helpers shall be deemed to be the employee, agent, or servant of the City. The City is interested in only the results obtained under this Agreement; the manner, means and mode of completing the same are under the sole control of Consultant.
- B.** This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in this Agreement. The parties agree that no individual performing under this Agreement on behalf of Consultant will be considered a City employee, and that no rights of City Civil Service, City retirement or City personnel rules shall accrue to such individual. Consultant shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals, and shall save and hold harmless the City with respect thereto.

7. CONFIDENTIALITY AND DATA SECURITY

- A.** All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Consultant or its subcontractors in connection with this Agreement, is confidential, proprietary information owned by the City. Except as specifically provided in this Agreement, Consultant and its subcontractors shall not disclose data generated in the performance of the Services to any third person without the prior written consent of the City Manager, or his/her designee.
- B.** Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times, in accordance with federal, state and local law and, if applicable, in compliance with Payment Card Industry Data Security Standards, to avoid unauthorized access. At a minimum, Consultant must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- C.** When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

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- D. In the event that data collected or obtained by Consultant in connection with this Agreement is believed to have been compromised, Consultant shall immediately notify the Aviation Department's Deputy Chief Information Officer. 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.
- E. Consultant agrees that the requirements of this Section shall be incorporated into all subcontracts entered into by Consultant. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.
- F. The obligations of Consultant and its subcontractors under this Section shall survive the termination of this Agreement.

8. CONTACTS WITH THIRD PARTIES

- A. Consultant and its subcontractors shall not contact third parties to provide any information in connection to the Services provided under this Agreement without the prior written consent of the City. Should Consultant or its subcontractors be contacted by any person requesting information or requiring testimony relative to the Services provided under this Agreement, or any other prior or existing Agreement with the City, Consultant or its subcontractors shall promptly inform the City, giving the particulars of the information sought, and shall not disclose such information or give such testimony without the written consent of the City or court order. The obligations of Consultant and its subcontractors under this Section shall survive the termination of this Agreement.
- B. Consultant agrees that the requirements of this Section shall be incorporated into all subcontracts entered into by Consultant. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

9. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENT

In order to do business with the City, Consultant must comply with Phoenix City Code, Chapter 18, Article V, as amended (Supplier's and Lessee's Equal Employment Opportunity Requirements), and as specifically prescribed in **Exhibit D**, Section C.

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10. FEDERAL AFFIRMATIVE ACTION REQUIREMENTS

Consultant certifies that it is compliant with the Affirmative Action requirements as provided by 14 C.F.R. Part 152, subpart E. Consultant agrees to comply with the federal Affirmative Action requirements during the term of the Agreement and Consultant will require its subcontractors to also comply with the federal Affirmative Action requirements as set out above, and as may be amended. Failure of Consultant and its subcontractors to maintain compliance during the term of the Agreement, including renewal options, is a material breach and may result in termination of this Agreement.

11. SBE/DBE UTILIZATION

The City extends to each individual, firm, vendor, supplier, contractor and subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of small and/or disadvantaged businesses to reflect both the industry and community ethnic composition. The use of such businesses is encouraged whenever practical.

12. AUDIT/RECORDS

The City reserves the right, at reasonable times, to audit Consultant's books and records relative to the performance of service under this Agreement. All records pertaining to this Agreement shall be kept on a generally accepted accounting basis for a period of three (3) years following termination of the Agreement. Consultant is required to maintain all such books and records at a location in Phoenix, Arizona, mutually acceptable to the City and Consultant.

13. COMPLIANCE WITH LAWS; SUPPLEMENTAL TERMS AND CONDITIONS

Consultant shall comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are or become applicable to this Agreement. Consultant shall also specifically comply with the applicable Supplemental Terms and Conditions that are set forth in **Exhibit D**. If a subsequently enacted law imposes substantial additional costs on Consultant, a request for an amendment may be submitted pursuant to Section 16.

14. CONSULTANT AND SUBCONTRACTOR WORKER BACKGROUND SCREENING

A. Contract Worker Background Screening

Consultant agrees that all contract workers and subcontractors [collectively Contract Worker(s)] that Consultant furnishes to the City pursuant to this Agreement shall be subject to background and security checks and

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screening (collectively Background Screening) at Consultant's sole cost and expense as set forth in this Section. The Background Screening provided by Consultant shall comply with all applicable laws, rules and regulations. Consultant further agrees that the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Consultant from any liabilities that may arise out of Consultant's services under this Agreement or Consultant's failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Consultant and its Contract Workers shall take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Agreement.

B. Background Screening Requirements and Criteria

Consultant agrees that it will verify legal Arizona worker status as required by Arizona Revised Statutes (A.R.S.) § 41-4401. Consultant further agrees that it will conduct a background check for real identity/legal name on all Contract Workers prior to proposing the Contract Worker to the City.

C. Additional City Rights Regarding Security Inquiries

In addition to the foregoing, the City reserves the right but not the obligation to: (1) have a Contract Worker be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of Contract Workers; and (4) object, at any time and for any reason, to a Contract Worker performing work (including supervision and oversight) under this Agreement.

D. Consultant Certification

By executing this Agreement, Consultant certifies and warrants that Consultant has read the Background Screening requirements and criteria in this Section, understands them and that all Background Screening information furnished to the City is accurate and current. Also, by executing this Agreement, Consultant further certifies and warrants that Consultant has satisfied all such Background Screening requirements as required. A Contract Worker rejected for work under this Agreement shall not be proposed to perform work under other City contracts or engagements without the City's prior written approval.

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E. Terms of This Section Applicable to all of Consultant's Contracts and Subcontracts

Consultant shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Agreement including, but not limited to, supervision and oversight services.

F. Materiality of Background Screening Requirements; Indemnity

The Background Screening requirements of this Section are material to the City's entry into this Agreement and any breach of this Section by Consultant shall be deemed a material breach of this Agreement. In addition to the indemnity provisions set forth in Section 4 of this Agreement, Consultant shall defend, indemnify and hold harmless the City for any and all Claims (as defined in Section 4) arising out of this Background Screening Section including, but not limited to, the disqualification of a Contract Worker by Consultant or the City for failure to satisfy this Section.

G. Continuing Duty; Audit

Consultant's obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Agreement. Consultant shall notify the City immediately of any change to a Background Screening of a Contract Worker previously approved by the City. Consultant shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Consultant's compliance with this Section pursuant to Section 12.

15. CONTRACT WORKER ACCESS CONTROLS, BADGE AND KEY ACCESS REQUIREMENTS

A CONTRACT WORKER SHALL NOT BE ALLOWED TO BEGIN WORK IN ANY CITY FACILITY WITHOUT: (1) THE PRIOR COMPLETION AND THE CITY'S ACCEPTANCE OF THE REQUIRED BACKGROUND SCREENING; AND (2) WHEN REQUIRED, THE CONTRACT WORKER'S RECEIPT OF A CITY ISSUED BADGE. A BADGE WILL BE ISSUED TO A CONTRACT WORKER SOLELY FOR ACCESS TO THE CITY FACILITY(S) TO WHICH THE CONTRACT WORKER IS ASSIGNED. EACH CONTRACT WORKER WHO ENTERS A CITY FACILITY MUST USE THE BADGE ISSUED TO THE CONTRACT WORKER.

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A. Badges

After receipt of the badge application, the Contract Worker will proceed to the badging office for processing of the badge application and issuance of the badge. The City will not process the badge application until the Contract Worker satisfies the required Background Screening (as defined herein). The Contract Worker shall comply with all requirements and furnish all requested information as requested by the badging office. Any and all fees associated with security badging will be assessed in compliance with Phoenix City Code § 4-22.

B. Key Access Procedures

If the Contract Worker's services require keyed access to enter a City facility(s), a separate key issue/return form must be completed and submitted by Consultant for each key issued.

C. Stolen or Lost Badges or Keys

Consultant shall report lost or stolen badges or keys to the City immediately. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

D. Return of Badges or Keys

All badges and keys are the property of the City and must be returned to the City at the badging office within one (1) business day of when the Contract Worker's access to a City facility is no longer required to furnish the services under this Agreement. Consultant shall collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contract Worker's services are no longer required at the particular City facility(s); or upon termination, cancellation or expiration of this Agreement.

E. Consultant's Default; Liquidated Damages; Reservation of Remedies for Material Breach

Consultant's default under this Section shall include, but is not limited to, the following: (1) Contract Worker gains access to a City facility(s) without the proper badge or key; (2) Contract Worker uses a badge or key of another to gain access to a City facility; (3) Contract Worker commences services under this Agreement without the proper badge, key or Background Screening; (4) Contract Worker or Consultant submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (5) Consultant fails to collect and

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timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement. Consultant acknowledges and agrees that the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety and welfare. Accordingly, Consultant agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by the City. The parties agree that Consultant's failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, Consultant shall be liable for and shall pay to the City the sum of one thousand dollars (\$1,000.00) for each breach by Consultant of this Section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Agreement in the event that Consultant breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages in the event that Consultant breaches this Section. The parties further agree that three (3) breaches by Consultant of this Section arising out of any default within a consecutive period of three (3) months, or three (3) breaches by Consultant of this Section arising out of the same default within a period of twelve (12) consecutive months, shall constitute a material breach of this Agreement by Consultant and the City expressly reserves all of its rights, remedies and interests under this Agreement, at law and in equity including, but not limited to, termination of this Agreement.

16. AMENDMENTS

Whenever an addition, deletion or alteration to the Services described in **Exhibit A** substantially changes the Scope of Services, thereby materially increasing or decreasing the cost of performance, a supplemental agreement must first be approved in writing by the City and Consultant before such addition, deletion or alteration shall be performed. Changes to the Services may be made and the compensation to be paid to Consultant may be adjusted by mutual agreement, but in no event may the compensation exceed the amount authorized without further written authorization. It is specifically understood and agreed that no claim for extra work done or materials furnished by Consultant will be allowed except as provided herein, nor shall Consultant do any work or furnish any materials not covered by this Agreement unless first authorized in writing. Any work or materials furnished by Consultant without prior written authorization shall be at Consultant's risk, cost and expense, and Consultant agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

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17. NON-ASSIGNABILITY

- A.** This Agreement is in the nature of a personal services agreement and Consultant shall have no power to assign its rights and obligations under this Agreement without the prior written consent of the City. Any attempt to assign without such prior written consent shall be void.
- B.** An essential consideration provided to the City by Consultant to induce the City to enter into the Agreement is Consultant's representation that the individual(s) performing Services shall include Consultant's principals, _____ and _____. Therefore, should any of the above-named individuals sever their relationship with Consultant, or otherwise be unavailable to carry out Consultant's duties under this Agreement for an extended period of time, which period shall be determined at the sole discretion of the City, then the City, without notice, may immediately terminate this Agreement for cause.

18. NO ORAL ALTERATIONS

No alteration or variation of the terms of this Agreement shall be binding on the parties herein unless such alteration or variation is in writing and signed by each of the parties to this Agreement. No oral understanding or agreement not incorporated in this Agreement shall be binding on any of the parties herein.

19. NOTICES

- A.** Any notice, consent or other communication (Notice) required or permitted under this Agreement shall be in writing and either: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) sent via facsimile transmission; (4) deposited with any commercial air courier or express delivery service; or (5) deposited in the United States mail, postage prepaid.

1) If to Consultant: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

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2) If to the City: Alice Stallings
Contract Administrator
City of Phoenix Aviation Department
3400 East Sky Harbor Boulevard, Suite 3300
Phoenix, AZ 85034-4405

Telephone: (602) 273-2051
Facsimile: (602) 273-8809
E-Mail: avn.contract.services@phoenix.gov

- B.** Notice shall be deemed received: (1) at the time it is personally served; (2) on the day it is sent via e-mail; (3) on the day it is sent via facsimile transmission; (4) on the second day after its deposit with any commercial air courier or express delivery service; or (5) five (5) business days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received.
- C.** Notices sent by e-mail and facsimile transmission will also be sent by regular mail to the recipient at the above address. This requirement for duplicate Notice is not intended to change the effective date of the Notice sent by e-mail or facsimile transmission.

20. INTEGRATION

This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto and supersedes all prior understandings, agreements, discussions, proposals, bids, negotiations, communications, and correspondence, whether oral or written. No representation, promise, inducement or statement of intention has been made by any party hereto which is not embodied in this Agreement, and no party hereto shall be bound by or liable for any statement of intention not so set forth.

21. GOVERNING LAW; FORUM; VENUE

This Agreement is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) shall govern their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Agreement that cannot be administratively resolved, or otherwise related to or arising from this Agreement, shall be commenced and maintained in the state or federal courts of the State of Arizona, Maricopa County, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

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22. FISCAL YEAR CLAUSE

The City's fiscal year begins July 1st and ends June 30th each calendar year. The City may make payment for Services rendered or costs encumbered only during a fiscal year and for a period of sixty (60) days immediately following the close of the fiscal year, under the provisions of A.R.S. § 42-17108. Therefore, Consultant must submit billings for Services performed or costs incurred prior to the close of a fiscal year within ample time to allow payment within this 60-day period.

23. FUND APPROPRIATION CONTINGENCY

Consultant recognizes that any agreement entered into shall commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. Consultant and the City herein recognize that the continuation of any agreement after the close of any given fiscal year of the City, which fiscal year ends on June 30 of each year, shall be subject to the approval of the budget of the City providing for or covering such agreement as an expenditure therein. The City does not represent that the budget item will be actually adopted, as budget determinations are made by the City Council at the time of the adoption of the budget.

24. TERMINATION OR SUSPENSION OF SERVICES

A. City's Right to Terminate

The City reserves the right to terminate this Agreement without cause, or to abandon the Services, or any part of the Services not then completed, by notifying Consultant in writing. Immediately upon receiving a written notice to terminate or suspend Services, Consultant shall:

- 1) Discontinue advancing the work in progress, or such part that is described in the notice.
- 2) Deliver to the City all collected raw data, draft reports, preliminary reports, working papers, estimates and forecasts entirely or partially completed, together with all unused materials supplied by the City.
- 3) Appraise the work it has completed and submit its appraisal to the City for evaluation.

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- 4) Be paid in full the pro rata value for Services performed to the date of its receipt of the Notice of Termination, including reimbursement for all reasonable costs and expenses incurred by Consultant in terminating the work, including demobilization of field service. No payment shall be made for loss of anticipated profits or unperformed Services.

B. Final Payment

The City shall make final payment for all Services performed and accepted within sixty (60) days after Consultant has delivered to the City any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Agreement. Any use by the City of preliminary reports, raw data or other incomplete material returned by Consultant shall be at the City's sole risk for such use.

C. Temporary Suspension

The City may, by written notice, direct Consultant to suspend performance on all or any part of the Services for such period of time as may be determined by the City to be necessary or desirable for its convenience. If such suspension causes additional expense to Consultant in performance, and not due to fault or negligence of Consultant, the payment will be adjusted on the basis of actual costs resulting directly from the suspension, and the period for performance of the Services will be extended by mutual agreement. Any claim by Consultant for a price adjustment must be supported by appropriate documentation asserted promptly after Consultant has been notified to suspend performance.

25. PROFESSIONAL COMPETENCY

A. Qualifications

Consultant represents that it is familiar with the nature and extent of this Agreement, the Services, and any conditions that may affect its performance under this Agreement. Consultant further represents that it is fully experienced and properly qualified, is in compliance with all applicable license requirements, and is equipped, organized, and financed to perform such Services.

B. Level of Care and Skill

Services provided by Consultant will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of Consultant's profession currently practicing in the same industry under similar conditions. Acceptance or approval by the City of Consultant's work

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shall in no way relieve Consultant of liability to the City for damages suffered or incurred arising from the failure of Consultant to adhere to the aforesaid standard of professional competence.

26. SPECIFIC PERFORMANCE

Consultant agrees that, in the event of a breach by Consultant of any material provision of this Agreement, the City shall, upon proper action instituted by it, be entitled to a decree of specific performance thereof according to the terms of this Agreement. In the event the City shall elect to treat any such breach on the part of Consultant as a discharge of the Agreement, the City may nevertheless maintain an action to recover damages arising out of such breach. This Section is not intended as a limitation of such other remedies as may be available to the City under law or equity.

27. FORCE MAJEURE

Consultant shall not be responsible or liable for, or deemed in breach hereof, because of any delay in the performance of its obligations hereunder to the extent caused by circumstances beyond its control, without its fault or negligence, and that could not have been prevented by the exercise of due diligence including, but not limited to, fires, natural disasters, riots, wars, unavoidable and unforeseeable site conditions, failure of the City to provide data within the City's possession, or to make necessary decisions or provide necessary comments in connection with any required reports prepared by Consultant in connection with the Services, and the unforeseeable inability to obtain necessary site access, authorization, permits, licenses, certifications and approvals. This constitutes force majeure.

28. DOCUMENTATION

A. Title

- 1) All documents including, but not limited to, artwork, copy, posters, billboards, photographs, video tapes, audio tapes, systems designs, drawings, estimates, field notes, investigations, software, reports, diagrams, surveys, analyses, studies or any other original works of authorship created by Consultant in the performance of this Agreement are to be and remain "works for hire" under Title 17, United States Code, and the property of the City, and all copyright ownership and authorship rights in the work(s) shall belong to the City pursuant to 17 U.S.C. § 201(b). In the event that the work(s) that is the subject matter of this Agreement is deemed to not be work for hire, then Consultant hereby assigns to the City all of the right, title and interest for

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the entire world in and to the work(s) and the copyright therein. Consultant agrees to cooperate and execute additional documents reasonably necessary to conform to its obligations under this Section.

- 2) All documents, together with all unused materials supplied by the City, are to be delivered to the City upon completion or termination of this Agreement before the final payment is made to Consultant.

B. Dissemination and Retention

There shall be no dissemination or publication of any information gathered or documents prepared in the course of the performance of the Services without the prior written consent of the City. Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Agreement, then, and in that event, upon written demand, Consultant shall relinquish to the possession and control of the City its entire file related to this Agreement and only those portions of said file deemed by the City to be not privileged shall be returned to Consultant pending the resolution of the existing or anticipated litigation.

C. Format and Quality

All documents prepared by Consultant shall be prepared in a format and at a quality approved by the City.

D. Document Review

Consultant shall review all documents provided by the City related to the performance of the Services and shall promptly notify the City of any defects or deficiencies discovered in such review.

E. Submittals

Consultant shall provide timely and periodic submittals of all documents required of Consultant, including subcontracts, if any, as such become available to the City for review.

29. RELEASE OF INFORMATION - ADVERTISING AND PROMOTION

- A. Consultant and its subcontractors shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Agreement, the Services, or any part thereof; or (2) any documentation or the contents thereof, without the prior written consent of the City, except as required by law. The name of

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any site on which Services are performed shall not be used in any advertising or other promotional context by Consultant or its subcontractors without the prior written consent of the City.

- B.** Consultant and its subcontractors shall comply with the Aviation Department's "Contractor Communication Procedures" available at <http://skyharbor.com/about/contractorcommunicationprocedures.html>.

30. CONFLICTS OF INTEREST

- A.** Consultant acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Phoenix City Council or any employee of the City has any financial interest in the contracting firm. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.
- B.** The City reserves the right to disqualify Consultant in the event the City determines Consultant has an actual or apparent conflict of interest with the purposes of this Agreement, and the provisions and procedures set forth in Section 24 shall apply.
- C.** Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of the City for the purpose of securing this Agreement, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, the City may, by one (1) calendar day written notice to Consultant, terminate the right of Consultant to proceed under this Agreement; provided that the existence of the facts upon which the City made such finding shall be an issue and may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, the City shall be entitled to the same remedies against Consultant as could be pursued in the event of default by Consultant.
- D.** This Agreement is subject to the requirements of A.R.S. § 38-511.

31. CLAIMS OR DEMANDS AGAINST THE CITY

- A.** Consultant acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Consultant

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agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, A.R.S. §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law shall control.

- B. Moreover, nothing in this Agreement shall constitute a dispute resolution process, an administrative claims process, or contractual term as used in A.R.S. § 12-821.01(C), sufficient to affect the date on which the cause of action accrues within A.R.S. § 12-821.01(A) and (B).

32. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS

Consultant waives any claims against the City and its officers, officials, agents and employees for loss of anticipated profits caused by any suit or proceeding, directly or indirectly, involving any part of this Agreement.

33. CONTINUATION DURING DISPUTES

- A. Consultant agrees as a condition of this Agreement that, in the event of any dispute between the parties, provided no Notice of Termination has been given by the City, and if it is feasible under the terms of this Agreement, each party shall continue to perform the obligations not related to the dispute required of it during the resolution of such dispute, unless enjoined or prohibited by a court of competent jurisdiction.
- B. Failure or delay by either party to exercise any right, power or privilege specified in or appurtenant to this Agreement shall not be deemed a waiver thereof.

34. THIRD PARTY BENEFICIARY CLAUSE

The parties expressly agree that this Agreement is not intended by any of its provisions to create any right of the public or any member thereof as a third party beneficiary nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

Remainder of page intentionally left blank. Signature page to follow.

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IN WITNESS WHEREOF, the parties herein have caused this Agreement to be executed.

CONSULTANT, a _____

CITY OF PHOENIX, an Arizona municipal
corporation
ED ZUERCHER, City Manager

By: _____

By: _____

Print Name: _____

Danny W. Murphy
Aviation Director

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

07/14/14

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**EXHIBIT A
SCOPE OF SERVICES**

Under the terms of this Agreement, Consultant may be called upon to:

- Photographically document events;
- Photograph the interior and exterior of airport buildings, day and night (lighting and additional equipment may be required and must be provided by Consultant);
- Photograph projects that may be large or small in scale (for publication and advertising purposes);
- Produce quality, high-resolution images designed in-camera;
- Create images using lighting with minimal Photoshop correction;
- Provide finished product, as needed (digital images, transparencies); and
- Provide photofinishing, color correcting, and other post-production work as needed.

Consultant will be required to interact with Aviation staff during regular business hours (8:00 a.m. to 5:00 p.m. local Phoenix time, Monday through Friday) and work both independently and collaboratively with Aviation staff outside regular business hours, as needed. Photography services may be needed at Phoenix Deer Valley Airport, Phoenix Goodyear Airport, Phoenix Sky Harbor International Airport, and/or at off-airport events in the Phoenix metropolitan area.

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**EXHIBIT B
FEE SCHEDULE**

Subject to City Approval

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**EXHIBIT C
INSURANCE REQUIREMENTS**

Consultant and its subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Consultant from liabilities that might arise out of the performance of the work under this Agreement by Consultant, its agents, representatives, employees or subcontractors and Consultant is free to purchase additional insurance as may be determined necessary.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Consultant shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of Consultant, including Products/Completed Operations coverage."

2. Worker's Compensation and Employers' Liability

Worker's Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

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- a. Policy shall contain a waiver of subrogation against the City of Phoenix.
- b. This requirement shall not apply when a consultant or subcontractor is exempt under A.R.S. 23-901, **AND** when such consultant or subcontractor executes the appropriate sole proprietor waiver form.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix shall be an additional insured to the full limits of liability purchased by Consultant even if those limits of liability are in excess of those required by this Agreement.
2. Consultant's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this Agreement, Consultant must provide to the City, within two (2) business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, e-mailed, hand-delivered or sent by facsimile transmission to:

City of Phoenix Aviation Department
c/o Ebix BPO
P. O. Box 257
Portland, MI 48875-0257

E-Mail: certsonly@periculum.com
Facsimile: (517) 647-7900

D. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Consultant from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: Consultant shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Agreement shall be sent directly to:

City of Phoenix Aviation Department
c/o Ebix BPO
P. O. Box 257
Portland, MI 48875-0257

E-Mail: certonly@periculum.com
Facsimile: (517) 647-7900

The City project/agreement number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

- F. SUBCONTRACTORS:** Consultant's certificate(s) shall include all subcontractors as additional insureds under its policies **or** Consultant shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. APPROVAL:** Any modification or variation from the insurance requirements in this Agreement shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

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**EXHIBIT D
SUPPLEMENTAL TERMS AND CONDITIONS
TO ALL AIRPORT AGREEMENTS**

A. Definitions

1. "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport and/or Phoenix Goodyear Airport, in accordance with the context of the contract.
2. "Contract" includes any and all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions or other documents, however denominated that grant or convey a right or privilege on an Airport, and to which this Exhibit is annexed and made a part thereof.
3. "Contractor" means every lessee, sublessee, licensee, permittee, concessionaire or other person, firm or corporation exercising a right or privilege on an airport pursuant to a contract, and includes Contractor's heirs, personal representatives, successors-in-interest and assigns.
4. "Premises" means the leasehold or site occupied by Contractor pursuant to the lease, license or permit that is the subject of this Contract.

B. Assurances

1. Contractor shall furnish its services on a fair, equal and not unjustly discriminatory basis to all users of the Airport.
2. Contractor shall charge fair, reasonable and not unjustly discriminatory prices for each unit or services; provided that, Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith, without liability therefor; or, at the election of the City of Phoenix or the United States, either or both of said Governments shall have the right to judicially enforce said requirement.
3. Contractor warrants that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap, be excluded from participating in any activity conducted on or from the Premises, or otherwise be excluded from the benefits offered by Contractor to the general public. Contractor

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further warrants that it will comply with all pertinent statutes, Executive Orders, and rules promulgated thereunder, to assure that no person is excluded on the grounds of race, creed, color, national origin, sex, age, or handicap.

4. As a part of the consideration for this Contract, Contractor does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended for another purpose involving the provision of similar services or benefits, Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Code of Federal Regulations, Title 49, DOT, Subtitle A, Office of the Secretary of Transportation, Part 21-Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations exist and may be amended from time-to-time.

If this Contract is a lease, then this Covenant is hereby made a covenant running with the land for the term of the lease, and is judicially enforceable by the United States.

5. As a part of the consideration of the Contract, Contractor does hereby covenant and agree that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any improvements on, over or under such Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and that the contractor shall use the Premises in accordance with all other requirements imposed pursuant to 49 C.F.R. Part 21, as it may be amended.

If this Contract is a lease, then this Covenant is hereby made a covenant running with the land for the term of the lease, and is judicially enforceable by the United States.

6. The foregoing discrimination covenants are a material part of this Contract and for breach thereof the City of Phoenix shall have the right to terminate this Contract and to reenter and repossess the Premises and facilities thereon, and hold the same as if said Contract had never been made. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

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7. Contractor agrees to insert the foregoing six provisions in any contract by which Contractor grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on or from the Premises.
8. Contractor agrees that it will undertake an affirmative action plan in conformance with 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.
9. City of Phoenix reserves the right to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations and additions.
10. The City of Phoenix reserves the right, but is in no way obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.
11. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation or maintenance of the Airport. In the event that FAA or its successors require modifications or changes in the Contract as a condition to the obtaining of funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications or changes as part of this Contract.
12. The Contract is subordinate to the reserved right of the City of Phoenix, its successors and assigns, to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft.

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This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft through said airspace or in landing at or taking off from, or operation on an Airport.

13. Contractor agrees to comply with the notification and review requirements as required by Title 14 of the Code of Federal Regulations, 14 CFR Part 77- Objects Affecting Navigable Airspace, in the event future construction of a structure is planned for the Premises, or in the event of a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1— Notice of Proposed Construction or Alteration— and provide documentation showing compliance with the federal requirements. Once the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself, its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree, on the Premises above the mean sea level elevation for: (1) Phoenix Sky Harbor International Airport, 1,133 feet; (2) Phoenix Goodyear Airport, 968 feet; (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of said covenant the City of Phoenix reserves the right to enter upon the Premises and remove the offending structure or cut the offending tree, all at the expense of Contractor.
14. Contractor, by accepting this Contract, covenants for itself, its successors and assigns that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport, or otherwise constitute a hazard to air navigation. As a remedy for the breach of said covenant the City of Phoenix reserves the right to enter upon the Premises and cause the abatement of such interference, all at the expense of Contractor.
15. Contractor acknowledges that nothing contained in this Contract shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. §40103(e).
16. This Contract and all the provisions hereof are subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation and taking-over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.
17. If the Contract involves construction, the contractor shall carry out the project in accordance with FAA airport design, construction and equipment standards and specifications current on the date of project approval.

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18. Contractor is encouraged to use fuel and energy conservation practices.

C. City of Phoenix Equal Employment Opportunity Requirement

1. If Contractor is by this Contract a supplier to, or lessee of, the City, then the requirements of the Phoenix City Code, Chapter 18, Article V applies, including the agreement that:

"Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee."

If the supplier/lessee employs more than thirty-five employees, the following language shall be included as the last paragraph to the clause above:

"The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression."

2. *Documentation.* Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

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3. *Monitoring.* The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

D. Immigration Reform and Control Act of 1986 (IRCA)

Contractor understands and acknowledges the applicability of the IRCA to it. Contractor agrees to comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify such compliance.

E. Conflict of Interest

Contractor acknowledges that the terms and conditions of Arizona Revised Statutes (A.R.S.) § 38-511 are incorporated into this Contract.

F. Legal Worker Requirements

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:

1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.
2. A breach of warranty under paragraph 1 shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
3. The City retains the legal right to inspect the papers of the Contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that Contractor or subcontractor is complying with the warranty under paragraph 1.

G. Disadvantaged Business Enterprise Requirements

1. To the extent that this Contract is covered by 49 CFR Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation Regulations at 49 CFR Part 26. The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor

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shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Contractor agrees to include the foregoing statement in any subsequent Contract that it enters and cause those businesses to similarly include said statement in further agreements.

2. To the extent that the Contract is a concession agreement covered by 49 CFR Part 23, the concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

Rev. 02/24/14