



**CITY OF PHOENIX
Phoenix Convention Center Department**

**REQUEST FOR PROPOSAL (RFP)
RFP 16-004**

Sports Facility Consulting Services

DEADLINE FOR RECEIVING PROPOSALS

**Thursday, January 7, 2016
12:00 noon Phoenix local time
Phoenix Convention Center
Attn: Celeste Mims
100 N. 3rd St., Level 2A
Phoenix, AZ 85004**

**RFP Administrator
Celeste Mims
Contracts Specialist II
602 495-5307
celeste.mims@phoenix.gov**

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SPORTS FACILITY CONSULTING SERVICES**

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I. INTRODUCTION

1. Introduction

The City of Phoenix, Phoenix Convention Center Department (PCCD) is seeking proposals from highly qualified firms for sports facility consulting services to assist the City in negotiations, business planning and market feasibility of a potentially new downtown sports facility. The selected Proposer would help evaluate the viability and potential re-use of the existing arena as well as collaborate with City staff, stakeholders and other consultants to determine the economics and a deal structure of a potential new arena.

Any engineering, architectural, construction, legal and financial advisory services, to the extent needed by the City, will be performed under a separate contract and are not a part of the scope of work. The successful Proposer may be requested by the City to provide general advice to the City related to the services identified above.

Sealed proposals must be clearly marked as Phoenix Convention Center, RFP 16-004, Sports Facility Consulting Services and will be received by the **Phoenix Convention Center Department, 100 N. 3rd Street, Level 2A, Attn: Celeste Mims, Phoenix, AZ, 85004, by Thursday, January 7, 2016, 12:00 noon Phoenix local time.**

To obtain a copy of this RFP in an alternative format, please contact Celeste Mims at (602) 495-5307 (Office), (602) 744-2862 (Fax), or (602) 495-5048 (TTY).

2. Background

The Phoenix Convention Center Department (“PCCD”) is an enterprise department of the City of Phoenix that provides a significant impact to the local economy through income generated from conventions, tradeshow, meetings, concerts and community events. The department is responsible for managing the daily operations of the Phoenix Convention Center, Symphony Hall, Orpheum Theatre and five public parking facilities; in addition to overseeing maintenance at the Herberger Theater Center. PCCD also oversees the Sheraton Grand Phoenix Hotel as well as the City’s real estate contracts and interests in Talking Stick Resort Arena.

PCCD parking facilities include the North, West, East, Regency, and Heritage garages; which, provide public parking for Chase Field, Talking Stick Resort Arena, the Arizona Science Center, the Hyatt Regency Hotel, ASU – Downtown Campus, Convention Center and Symphony Hall events.

3. Contract Term

The term of any Agreement resulting from this RFP will be contingent upon the outcome of the negotiations. The contract term could be for one (1) year and will include 4 one-year

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options to extend the term of the agreement, which may be exercised at the sole discretion of the City.

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II. PROPOSAL FORMAT

1. Introduction

The following guidelines are provided to ensure the equitable evaluation of competitive sealed proposals. Proposals should be prepared as closely as possible in accordance with instructions outlined in this section. Proposer is advised to read this RFP in its entirety. Failure to read and/or understand any portion of this RFP shall not be cause for waiver of any portion of the RFP or subsequent Agreement. **Proposals that fail to meet the format guidelines may be considered non-responsive and disqualified from further consideration.**

A response to this solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's RFP. Such a proposal does not become a contract until it is executed by the Department Director.

2. Contracting Authority

The written proposal shall be signed by a company/corporate representative authorized to bind the Proposer. The proposal shall provide the name, title, address and telephone number of representatives with authority to contractually bind the company and who may be contacted during the contract term.

3. Proposal Submittal Instructions

A. Due Date and Address

Submittals shall be received no later than Thursday, January 7, 2016, 12:00 noon Phoenix local time at the following location:

Phoenix Convention Center Department
Attn: Celeste Mims
100 N. 3rd Street, Level 2A
Phoenix, AZ 85004-2231

All proposals must be logged and time-stamped by the PCCD receptionist at the above specified location. Receptionist will issue a receipt to delivery person acknowledging that PCCD has received the proposal and will also request the delivery person's signature acknowledging they have delivered the proposal. Proposals submitted by Fax or Email will not be accepted.

B. Number of Submittals

Firms must submit a copy of their proposal on compact disc (CD) or USB drive, an original and seven (7) copies for a total of nine (9) of their proposal.

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C. Schedule of Activities

RFP Issue Date	12/21/2015
Proposal Due Date	1/7/2016
Evaluation Panel Meets	1/12/2016
Agreement Effective Date	2/10/2016

The City reserves the right to amend this schedule as necessary.

D. Proposer Responsibility

It is the responsibility of each Proposer before submitting a proposal to:

- Thoroughly examine the Proposal document and other data identified in the Proposal document.
- Consider applicable laws that may affect cost, progress, performance, or furnishing of the work.
- Study and carefully correlate Proposer's knowledge and observations with Proposal document and other related data.
- Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which a Proposer has discovered in or between the Proposal document and such other related documents.
- Obtain a copy of any addendum relevant to this solicitation. The City of Phoenix takes no responsibility for informing recipients of changes to the original solicitation document. Failure to submit addendums with the solicitation response may be grounds for deeming a submittal non-responsive.

4. Proposal Evaluation/ Criteria

A. Proposals will be evaluated by members of an evaluation committee in accordance with the following criteria:

<u>CRITERIA</u>	<u>POINTS</u>
<p>Sports Facility Deal Making Experience (significant experience in negotiation of sports facility deals, advising governments, arena owners/operators and professional sports teams in economics, planning and development)</p>	300
<p>Qualifications and Availability of Key Personnel (3 or more years of experience, qualifications, knowledge of sports facility design and construction, recent experience with projects similar in size/scope, ability to immediately dedicate key personnel and to be available on an ongoing basis)</p>	250

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Quality and Responsiveness of Proposal (approach to Scope of Work, proposal prepared in accordance with RFP requirements)	150
Cost Proposal (proposer must specify hourly rates)	150
Firm Experience (years in business, stable/established firm, reference checks, comparability of size, and complexity of previous contracts)	150
Technical Evaluation Total Points	1000
<u>Interview Process Points (Most Qualified Proposers Only)</u> (Presentation – 200 points, Response to questions – 150)	<u>350</u>
TOTAL POINTS	1350

Only the highest-ranking firms will be invited for an interview with the selection committee. **Firms selected for an interview will be interviewed (using Skype), within two (2) days of being notified.** Based on this interview and possible follow-up meetings, the selection committee may recommend Proposer(s) to Management. City staff will then have the right to negotiate with finalist(s) on final Agreement terms. Any adjustments will be mutually agreed upon and made only if it is in the best interest of the City to do so. If an Agreement cannot be successfully negotiated with the prevailing Proposer, negotiations may be entered into with the second place Proposer, and so on. Following negotiations, the City Council will be asked to approve staff's recommendation, and a written Agreement will be executed. The effective date of the Agreement must begin at least 30-days after Council action.

- B. The evaluation committee may include representatives from the PCCD, various City departments, and/or outside business representatives.

The PCCD reserves the right to modify the composition of the evaluation team to accommodate scheduling or other conflicts, with little or no notice to Proposers.

- C. Up to a total of 1000 points will be awarded through the proposal evaluation process. If in the City's best interest, the most qualified firms may be asked to participate in an interview process. Proposers selected to interview will be awarded up to 350 points during the interview process. The scores awarded through the interview process will be added to the points awarded through the technical evaluation process. The firm receiving the highest score will be recommended to the PCCD Director for award of the contract for service. The City

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reserves the sole right to determine the sufficiency of the experience and qualifications of all proposers with which it desires to negotiate a final Agreement.

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III. PROPOSER'S SUBMITTAL

Submittal Instructions

In order to be considered, Proposer must complete and submit their proposal to the address designated, no later than the date specified on the cover page of the RFP.

In order to expedite the evaluation of proposals, each Proposer must organize their submittal into the following sections identifying each section as Tab 1, Tab 2...etc. All written responses must be presented in 12- point Times New Roman or Arial type font. Proposals which do not follow the specified format outlined below may be deemed unresponsive and disqualified from the process. In addition, failure on the part of Proposer to provide the required documentation may be cause for rejection of the proposal. The entire proposal, including all attachments and required information should not exceed 25 pages.

In the event of any conflict between any of the proposal documents, resolution thereof shall be at the City's sole discretion.

The submission of a proposal herein constitutes the agreement of any Proposer that any contract to be drawn as a result of an award herein will be prepared by the City of Phoenix. The submission of a proposal shall further constitute the agreement of each Proposer that it will not insist on the use of standard contract agreements, documents or forms, and that it waives any demand for the use of its standard agreements. Pursuant to City Charter, the language of the contract(s) to be executed will be drafted under the supervision of the City Attorney of the City of Phoenix and shall be the controlling document.

1. **Cover/ Transmittal Letter/ RFP Addendum Receipt(s), if applicable**
2. **Affidavit (Attachment A)**
3. **Business Contact Information (Attachment B)**
4. **Cost Proposal Format (Attachment C)**

The format must include hourly rates for the successful Proposer and any sub-consultants. Hourly rates are to be inclusive of all labor, equipment, materials, and other associated costs (including all expenses for wages, supervisory differentials, payroll taxes, insurance and benefits, and all overhead burdens associated with providing the proposed services). After contract award, the City and successful Proposer will determine which expenses will be reimbursed.

5. **Business and Financial References (Minimum Three Each for a Total of Six)**
Proposers must submit a minimum of three business references and three financial references respectively for a total of six references. A financial reference can be a bank, creditor, or lending institution.

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6. Experience and Qualifications Statement

- A. Executive Summary – Provide an overview of the Proposer’s company including the range of services offered by the Proposer, years in business, and a brief history.
- B. Submit a list of all clients that Proposer has served in the last three (3) years for services similar in size and scope. Please provide contact person, position, address, email address, telephone number, dates of service and description of the type of service provided.
- C. State your ability to begin work and the capacity of your firm to dedicate resources needed to provide the services requested.
- D. Proposer shall also provide the following information with the proposal:
 - A complete company profile
 - Proposers experience related to the scope of work
 - Proposers knowledge of sports facility design and construction to advise the City on programming, design and development
 - Provide details of present or past projects similar in scope and size
 - A roster of key personnel, including an organizational chart, and a listing of officers, directors, and executive personnel and their qualifications.
 - Resumes of key personnel
 - Provide the name of any sub-consultants that may be utilized

7. Operations Plan

Proposers shall prepare a detailed approach to the scope of work that indicates the services to be performed by the Proposer and an initial recommendation of activities for the City. This section should confirm the Proposer’s understanding of the RFP. The Proposer should clearly outline the recommended approach of the organization in meeting the responsibilities the City has outlined. The method of approach of service should be addressed in a manner that reflects understanding and commitment to providing services as needed in a professional and timely manner.

Proposer should clearly distinguish tasks that the Proposer will undertake from those which are the responsibility of the City. Absence of this distinction shall mean that Proposer is assuming full responsibility for all tasks. The Proposer must explain how their administrative processes will ensure that appropriate levels of attention are provided and that work is properly performed.

8. Exceptions

Proposer may include a list of exceptions to the requirements of the RFP and attachment documents, if any, stated on a separate page labeled “Exceptions Statement”. Proposer must identify the requirement, nature of the deviation and provide an explanation. If there are no deviations or exceptions to any portion of this RFP, Proposer shall state so on the page entitled “Exceptions Statement”. If no deviations or exceptions are identified and Proposer’s submittal is accepted by the City, Proposer shall conform to all of the requirements specified in the RFP. Proposer shall not take

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any exception to any mandatory provision or material requirement of this RFP or the submittal shall be deemed non-responsive and disqualified from further consideration.

It is the intent of the City to award a contract on a fair, competitive basis. For this reason, the City may view the notation of any "Exception" in response to any material conditions or requirement of the RFP, as provided for in Section VI, General Terms and Conditions, as an attempt by the Proposer to vary the terms of the RFP which, in fact, may result in giving such Proposer an unfair advantage over other Proposers. For this reason, the City will, at its option, not allow exceptions to any material requirement if, in the opinion of the City, the exceptions alter the overall intent of this RFP, unless the exception would be of material benefit to the City. Additionally, the City may, at its option, deem any submittal non-responsive based on the number and nature of any exceptions noted by the Proposer.

9. **Confidential Information**

Proposer shall provide a list of confidential pages. Refer to Section IV, Paragraph 3 "Confidentiality of Proposals".

10. **Additional Information**

Proposer should provide any additional information that would be helpful in evaluating the Proposer's ability to provide innovative and effective services at the Phoenix Convention Center.

11. **Opinion from Legal Counsel (limited to 3 single-sided pages)**

Proposer is required to obtain an opinion from legal counsel stating whether or not litigation is pending or contemplated that could affect Proposer's ability to undertake its proposal under this RFP. The letter shall include whether the proposer is currently involved in any litigation, threatened litigation, investigation, reorganization, receivership, filing, strike, audit, corporate acquisition, unpaid judgments or other action that could have an adverse impact on proposer's ability to provide the required RFP needs. If so, please describe the nature of the item and its potential impact.

State whether your firm has been unable to complete a contract, been removed from a contract, or been replaced during a contract period in the past five years. If so, explain what happened and why.

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IV. PROPOSER'S RIGHTS

1. Proposer Rights

All materials submitted in response to this Request for Proposal become the property of the City upon delivery to the City and shall be appended to any formal documentation that would further define or expand the contractual relationship between the City of Phoenix and the Proposer. No submission or supporting documentation will be returned to Proposer.

Proposers submitting proposals should recognize that the City is a public body and as a public body, the City is subject to the disclosure requirements of Arizona Public Records Law and must abide by public record laws. Neither party shall be liable for disclosures required by law.

Beginning on the date the solicitation is issued and until the date the contract is awarded or the solicitation withdrawn, all persons or entities that respond to the solicitation for Sports Facility Consulting Services, including their employees, agents, representatives, proposed partner(s), subcontractor(s), joint venturer(s), member(s), or any of their lobbyists or attorneys, (collectively, the Proposer) will refrain, from any direct or indirect contact with any person (other than the designated RFP Administrator) 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, the Mayor and other members of the Phoenix City Council. As long as the solicitation is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff.

Proposers may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through Celeste Mims, RFP Administrator, conducted in person at 200 West Washington, Phoenix, Arizona 85003, and are posted as open meetings with the City Clerk at least twenty-four (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/Bidder, 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 review panel or selecting 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 contracts are awarded in public, and protect the integrity of the selection process. Proposers that violate this policy shall be disqualified.

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2. City Reservation of Rights

This RFP does not commit the City to award a contract or pay any costs incurred in the preparation of a proposal to this request.

The City reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified sources, or to cancel, in part or in whole, this RFP.

The City reserves the right to:

- i. Conduct discussions with Proposers for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal in order to clarify an offer and assure full understanding of, and responsiveness to solicitation requirements. If such a discussion is deemed necessary, the only City staff that is authorized to contact the Proposer is the RFP Administrator listed on the front of this RFP. The RFP Administrator shall document any such discussion in the City's file.
- ii. Waive any informalities or irregularities in any Proposal or submission procedure.
- iii. Accept or reject any or all proposal(s), or any part thereof.
- iv. Reissue or cancel this RFP, with or without modification.
- v. Investigate thoroughly the financial status, experience and record of each Proposer.
- vi. Determine the sufficiency of the experience and qualifications of all Proposers and to select the Proposer(s) with which it desires to negotiate a final Agreement.
- vii. Accept the Proposal of the next qualified Proposer in the event the selected Proposer refuses or fails to timely execute a formal Agreement with the City or timely provide the required bonds and/or insurance certificate(s).
- viii. Negotiate with the selected Proposer to acquire the product(s) or service(s) that best meets its needs within any limitations of available funding.
- ix. Award agreements for products or for other services to more than one Proposer if most advantageous to the City.
- x. Any other option deemed by the City to be in the City's best interest.

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3. Confidentiality of Proposals

All proposals submitted in response to this RFP shall become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If a Proposer believes that a specific section of its proposal response is confidential, the Proposer shall isolate the pages and mark them confidential in a specific and clearly labeled section of its proposal response.

Proposer understands that the City is subject to public records disclosure laws, and that these laws will govern the disclosure responsibilities of the City notwithstanding the terms of any resulting Agreement. The City agrees that, to the extent reasonably practical, it will notify the Proposer of any public records requests of any part of the confidential information, and will give the Proposer a reasonable opportunity to contest the public records request.

Proposer and the City acknowledge and agree that all confidential information shall not be disclosed by the City or its agents or personnel except to the extent required by court order or if it is subject to disclosure under Arizona's Public Records Law. If the City receives a subpoena or other request requiring it to disclose Proposer's confidential information, the City will make reasonable attempts to notify Proposer in order to permit Proposer to seek a protective order. So long as the City makes reasonable attempts to notify Proposer, the City shall thereafter be entitled to comply with such demand to the extent permitted by law, subject to any protective order that may have been entered by a court in the matter.

These confidentiality provisions shall be inoperative as to any portion of the confidential information which: (1) is or becomes generally available to the public other than as a result of a disclosure to the City by the Proposer or its representatives; (2) becomes available to the City in good faith from a third party not subject to a confidentiality obligation to the Proposer; or (3) was known to the City on a non-confidential basis prior to its disclosure by the Proposer.

4. Late Proposals

Late proposals shall be rejected regardless of the reason, including mail delivery problems beyond Proposer's control. Proposers mailing their responses should allow sufficient time to insure delivery by the date and time specified.

Proposals received after the stipulated opening date and time shall be deemed non-responsive.

5. Inconsistency or Error in the RFP

Any Proposer believing that there is any ambiguity, inconsistency or error in the RFP shall promptly notify the City in writing of such apparent discrepancy. Failure to so notify the City by the RFP submission due date will constitute a waiver of claim of ambiguity, inconsistency or error.

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6. Proposers Errors and Omissions

The City is not responsible for any Proposer's errors or omissions.

7. Addenda

The City shall not be responsible for any oral instruction given by any employees of the City of Phoenix in regard to the proposal instructions, specifications or proposal documents as described in this RFP. Any changes will be in the form of a written addendum, which will be furnished to all Proposers who are listed with the City as having received the RFP or to any other Proposer who requests an addendum.

8. Proposer Incurred Costs

The Proposer shall be responsible for all costs incurred in preparing or responding to this RFP. All materials and documents submitted in response to this RFP become the property of the City and may not be returned after the proposal submission deadline.

9. Modification or Withdrawal of Proposal

A proposal may not be modified by a Proposer following the proposal submission deadline and each Proposer so agrees in submitting the proposal. Proposals may be withdrawn, altered and/or resubmitted at any time prior to the submission deadline. Notice of withdrawal of proposal prior to submittal date must be in writing and must be signed by the Proposer.

10. Proposer Certification

By submission of a proposal, the Proposer certifies that the Proposer has not paid or agreed to pay any fee or commission, or any other item of value contingent on the award of a contract to any employee, official or current contracting consultant of the City.

11. City's Right to Disqualify

Although not intended to be an exhaustive list of causes for disqualification, any one or more of the following, among others, may be considered sufficient for the disqualification of a Proposer and the rejection of the Proposal, at the sole discretion of the City:

- A. Evidence of collusion among Proposers.
- B. Evidence of any real or apparent conflict of interest that is disclosed by the Proposal package submitted or any other data available to the City. Any Proposer submitting a Proposal herein waives, for all time, any right it may have to object before any body or agency, including but not limited to, the Phoenix City Council, or any court, to the exercise of this right of disqualification by reason of real or apparent conflict of interest as determined by the City.

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- C. Lack of business skills or financial resources necessary to fulfill the obligations of any resulting Agreement, as revealed by either financial statements or experience statement.
- D. Proposals submitted without complete pricing.
- E. Proposals that contain altered or conditional cost information not included in Section III, paragraph 9 “Exceptions”.
- F. Lack of responsibility as shown by past work, references, or other factors, or failure to faithfully perform any previous Agreement with the City, in the City’s sole determination.
- G. Proposer is in arrears or in default to the City on any debt or Agreement or has defaulted, as surety or otherwise, upon any obligation to the City.
- H. Submission of a Proposal that is incomplete, conditional, ambiguous, obscure, or which contains alterations not called for, or irregularities of any kind.
- I. Failure to furnish all information requested in the form and format specified.

12. Warranties

The Proposer represents and warrants that the Proposer is fully aware of this RFP’s requirements and intended uses of the products and services to be provided by the Proposer to the extent that they are described in the Proposal. For each service or product described in the “Scope of Work,” the Proposer warrants that the Proposer shall perform it: 1) in a workmanlike manner, and 2) according to its description contained in the Proposal.

Each party represents and warrants that it has the right to enter into a Contract and there are no outstanding assignments, grants, licenses, encumbrances, obligations, and/or Agreements which relate to the products or services (whether written, oral, or implied) which are inconsistent with this RFP and the rights transferred herein.

The Proposer further represents that the City’s use of the products as contemplated herein does not and will not infringe any patent, copyright, or other proprietary right of any third party, and there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by the Proposer.

13. Covenant Against Contingent Fees

The Proposer warrants that no person or selling agent has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Proposer for the purpose of securing business.

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For breach or violation of this warranty, the City of Phoenix shall have the right to annul any resulting Contract without liability or in its discretion to deduct from any fees or payments due the Proposer the commission, percentage brokerage or contingent fee.

14. Gratuities

The City may, by written notice to the Proposer, terminate the right of the Proposer to proceed under the Contract upon one (1) calendar day notice (or such other notice as City may deem appropriate), if it is found that gratuities in the form of entertainment, gifts or otherwise were offered or given by the Proposer, or any agency or representative of the Proposer, to any officer or employee of the City for the purpose of: (1) securing a City contract; (2) securing favorable treatment with respect to the awarding or amending of a City contract; or, (3) the making of any determinations relevant thereto. In addition, should such a determination be made, City shall be entitled to pursue all of its legal remedies available under the laws of the State of Arizona.

15. Protest Process

Staff recommendations to award the contract(s) to a particular offeror shall be posted on the City of Phoenix website:

<https://www.phoenix.gov/finance/business-opportunities/bid-awards-and-recommendations>

Any unsuccessful offeror may file a protest no later than 7 calendar days after the recommendation is posted on the website. All protests shall be in writing, filed with the Procurement Authority identified in the solicitation and include the following:

- Identification of the RFP or other solicitation number;
- The name, address and telephone number of the protester;
- A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- The form of relief requested; and
- The signature of the protester or its authorized representative.

The Procurement Authority (Phoenix Convention Center Director) will render a written decision within 14 calendar days after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is completed.

16. Proposer Inquiries

Any questions that arise relating to this RFP shall be directed, in writing, to:

**Celeste Mims
Phoenix Convention Center Department
100 N. 3rd Street, Level 2A
Phoenix, AZ 85004
celeste.mims@phoenix.gov
602 495-5307**

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To be considered, written inquiries shall be received at the above address by Tuesday, December 29, 2015, 12:00 noon Phoenix local time. Written inquiries may be submitted by email, mail, or fax.

No informal contact initiated by Proposers on the proposed service will be allowed with members of the City's staff from the date of distribution of this RFP until after the closing date and time for the submission of proposals. All questions concerning or issues related to this RFP shall be presented in writing.

17. News Releases

News releases pertaining to this service or any part of the subject shall not be made without prior approval of the City of Phoenix.

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V. SCOPE OF WORK

1. Overview

The Proposer shall furnish all labor, equipment, materials, transportation and other associated costs necessary to provide sports facility consulting services to the City for the purpose of assisting the City in negotiations, business planning and market feasibility of a potentially new downtown sports facility. The Proposer will collaborate with City staff, stakeholders and other consultants to determine the economics and deal structure for a new arena. The Proposer would also help to evaluate the viability and possibility of using the existing arena. Proposer will create a downtown sports facility deal that will be in the best interest of the City, businesses and the community. Proposer will also advise the City on team ownership, arena operator and league (NBA, NHL, etc.) requirements, and approval processes.

2. Work Requirements

The services to be performed by the Proposer may include the following:

- a. Provide consulting services to facilitate arena discussions, negotiation, planning and development. Assist City staff and representatives in developing strategies and documentation to further sports facility negotiations.
- b. Develop and/or facilitate market demand/economic impact/feasibility study as directed by City and assist in the development, review, analysis and communication of such studies and reports.
- c. Assist City and its contractors with sports facility site analysis, building specifications, amenities and other programming, design or development recommendations.
- d. Assist City in analyzing information provided by professional sports teams and/or other private partners to further negotiations and other City goals.
- e. Assist City in negotiating term sheet and contract review and development.
- f. Advise City on recommended corporate structuring relative to sports facility development and operations.
- g. Advise City on real estate development planning, valuation and negotiations ancillary to sports facility project.
- h. Recommend sports facility value engineering as appropriate.

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- j. Participate in City public and private meetings regarding sports facility development as requested.
- k. Recommend insurance program and/or other measures to minimize City's exposure to sports facility risks.
- l. The format and frequency of the submission of reports will be mutually agreed upon by the parties. Proposer may be required to submit other deliverables which will be determined after contract award.
- m. Other related professional services as requested by City.

3. Other Information

Any engineering, architectural, construction, legal and financial advisory services, to the extent needed by the City, will be performed under a separate contract and are not a part of the scope of work. The successful Proposer may be requested by the City to provide general advice to the City related to the services identified above.

Subcontracting will be allowed, but the prime consultant will be responsible for performing at least 51% of the work.

4. Customer Service

A high level of professionalism and customer service is a priority for the City. Proposer shall provide services in a professional, business-like, and efficient manner, providing the highest level of assistance, service and courtesy to patrons of the facility. Complaints must be responded to quickly and the City must be informed of all customer issues and resolutions. A contact person must be available to provide customer assistance before, during, and after periods of high event activity to provide immediate service.

The ability to effectively communicate with City staff as well as our clients is a vital component to the City's customer service expectations. Proposers should also provide key members of their staff that can serve and communicate with the Convention Center's diverse clientele.

5. Attendance at Meetings

Proposer will be required to attend meetings as necessary or requested by the City. Proposer shall attend meetings on-time and be prepared with all necessary documentation for the meeting. Proposer will not leave before the meeting is adjourned.

6. Parking

Proposer will be responsible for their own parking.

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VI. GENERAL TERMS AND CONDITIONS

Any Proposer entering into a contract with the City must agree to a number of general terms and conditions. If a Proposer cannot agree to any of the stated general terms and conditions, its proposal must clearly state the reason for any such non-compliance.

1. Compliance with Laws; Indemnity

In performing under any resulting Agreement, the Proposer shall comply with all applicable laws, ordinances, rules, regulations, and codes of Federal, State and local governments, including, but not limited to the Arizona Worker's Compensation Act and all Federal and State tax laws. Because the Proposer will be acting as an independent Proposer, the City assumes no responsibility for the Proposer's acts.

Proposer shall indemnify, save, and hold harmless the City of Phoenix from all loss, cost and damage by any reason of any violation of the provisions of this paragraph and from any liability including, but not limited to fines, penalties, and other costs arising therefrom.

2. Conditions and Causes For Termination:

Any resulting contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice to Proposer. The City at its convenience, by written notice, may terminate any resultant contract, in whole or in part. If any resultant contract is terminated, the City shall be liable only for payment under the payment provisions of any resultant contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Proposer shall submit detailed cost claims in an acceptable manner and shall permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

The City reserves the right to cancel the whole or any part of any resultant contract due to failure of Proposer to carry out any term, promise, or condition of any resultant contract. The City will issue a written notice of default to Proposer for acting or failing to act as in any of the following:

In the opinion of the City, Proposer provides personnel who do not meet the requirements of any resultant contract;

In the opinion of the City, Proposer fails to perform adequately the stipulations, conditions or services/specifications required in any resultant contract;

In the opinion of the City, Proposer attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality;

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Proposer fails to furnish the required service and/or product within the time stipulated in any resultant contract;

In the opinion of the City, Proposer fails to make progress in the performance of the requirements of any resultant contract and/or give the City a positive indication that Proposer will not or cannot perform to the requirements of any resultant contract.

3. Federal – State – City Excise Taxes

The City of Phoenix is exempt from Federal Excise Tax, including Federal Transportation Tax. Exemption certificates will be furnished upon request. Sales or leases to the City are not exempt from State of Arizona or City of Phoenix Transaction Privilege or Privilege License Taxes.

4. Tax Responsibility Qualification

The successful Proposer may be required to establish, to the satisfaction of the City that any and all fees and taxes due to the City of Phoenix or the State of Arizona for any License or Transaction Privilege Taxes, Use Taxes or similar excise taxes are currently paid (except for matters under legal protest).

Any Proposer submitting a proposal agrees that the submission of the proposal constitutes a waiver of the confidentiality provisions contained in the City of Phoenix Finance Code and any similar confidentiality provisions contained in the statutes of the State of Arizona relative to State Transaction Privilege Taxes or State Use Taxes.

Any Proposer submitting a proposal further agrees that the submission of a proposal hereunder is, and shall constitute, a written authorization to the Finance Department of the City of Phoenix and to the State Department of Revenue of the State of Arizona to release tax information relative to Arizona Transaction Privilege Taxes, Arizona Use Taxes to the procuring agency in order to assist the Department and the City in evaluating such Proposer's qualifications as a responsible contracting party under the proposal submitted.

5. Non-Waiver of Liability

The City of Phoenix, as a public entity supported by tax money, in execution of its public trust, cannot agree to waive any lawful or legitimate right to protect the public treasury and the right of the taxpaying public to recover amounts lawfully due it. Therefore, any Proposer submitting a proposal herein agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or to waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.

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6. Offset Provisions

The Proposer shall recognize and be required to abide by the provisions of the City Charter of the City of Phoenix, which require that no payment be made to any Proposer as long as there is any outstanding indebtedness or obligation due to the City and direct that any such obligations be offset against any payment due the Proposer as vendor under any resulting Agreement.

7. Applicable Laws

Any and all legal disputes arising under any resulting Agreement or out of the proposal herein shall be tried according to the law of the State of Arizona and the Proposer shall agree that the venue for any such action shall be in the State of Arizona, County of Maricopa.

8. Continuation During Disputes

Proposer agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of any resulting contract, the Proposer shall continue to perform the obligations required of Proposer during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.

9. Strict Performance

Failure of either party to insist upon the strict performance of any item or condition of any resulting contract or to exercise or delay the exercise of any right or remedy provided in any resulting contract, or by law, or the acceptance of materials or services, obligations imposed by any resulting contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of any resulting contract.

10. Agreement Administration

For the purposes of any resulting Agreement, the Agreement Administration shall be the PCCD Business Services Deputy Director or designee. In any dispute concerning an interpretation of the resulting Agreement or concerning the work to be performed hereunder, the final determination shall be made by the Agreement Administrator and their decision shall be final and binding upon the parties.

11. Copyright; Indemnity

Proposer specifically warrants and covenants that none of the material, concepts, ideas, or other products provided under this RFP and any resulting Agreement shall in any way violate any copyright, license, trade secret, or other property right of any other person. At its own expense, Proposer shall indemnify, defend, save and hold harmless City and its officers, agents, and employees from and against any and all claims, demands, suits,

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liabilities, damages, settlements, losses, and costs, including attorney's fees, suffered or incurred by City as a result of any claim that the material, concepts, ideas, or other products provided within the scope of this RFP and any resulting Agreement infringe any U.S. copyright, license, trade secret or other property right, provided that Proposer is notified promptly in writing of such claim. If as a result of any claim of infringement against any copyright, license, trade secret, or other property right, Proposer or City is enjoined from using the products provided under this RFP and any resulting Agreement, or if Proposer believes that the products are likely to become the subject of a claim of infringement, Proposer may, at Proposer's option and sole expense, (1) procure the right for City to continue to use the products; or (2) to the satisfaction of City, replace or modify the products so as to make them non-infringing and capable of performing the function for which the product was provided.

12. Employment and Organization Disclaimer

Any Agreement entered into as a result of this RFP will not constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind between the parties, and the rights and obligations of the parties shall be only those expressly set forth therein. The Proposer will agree that no persons supplied by it in the performance of any resulting Agreement are employees of the City and further agrees that no rights to the City's civil service, retirement or personnel rules and benefits accrue to such persons.

The Proposer shall be responsible for all salaries, wages, bonuses, retirement withholdings, workers' compensation, unemployment compensation, other benefits taxes and premiums appurtenant thereto concerning such persons provided by such Proposer in the performance of any resulting Agreement, and Proposer shall save and hold the City harmless with respect thereto.

Further it is understood and agreed by the parties that Proposer is, and shall remain, an independent Contractor under any resulting Agreement. Neither party is the agent of the other, nor is either party authorized to act on behalf of the other party. Proposer shall be liable to CITY for any financial liability arising from any finding to the contrary by any forum or competent jurisdiction

13. Assignability of any Provisions

Any resulting Agreement, and any rights or obligations thereunder, shall not be transferred, assigned or subcontracted by Proposer without the prior written consent of CITY. Any attempt to assign without such prior written consent shall be void. Resulting Agreement shall inure to the benefit of each of the parties and their permitted successors and assigns.

14. Invalidity of any Provisions

This RFP and any resulting Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable. Such a

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holding shall result in the offending term or provision being ineffective to the extent of its invalidity or unenforceability without invalidating the remaining terms and provisions hereof; this RFP and any resulting Agreement shall thereafter be construed as though the invalid or unenforceable term or provision were not contained herein.

15. Method of Payment

Payment will be made only after submission of proper documentation to City and in accordance with standard City and PCCD business practice.

Payment of any invoice shall not preclude City from making claims for adjustment of any item or service found not to have been in accordance with the specifications, or the Scope of Work of any resulting Agreement.

16. Subcontractors

The Proposer shall hold the City harmless from any claims by third parties for supplying labor or material to the Proposer or its subcontractors in the performance of the work required under any resulting Agreement.

17. Remedies

The City shall have, in addition to the remedies provided herein, any other remedies provided by law.

18. Transactional Conflicts of Interest

The Proposer acknowledges that any Agreement resulting from this RFP is subject to cancellation by the City pursuant to Section 38-511, Arizona Revised Statutes.

19. Audits; Records

Proposer shall maintain accurate and complete accounting records and vouchers in support of all cost billings to City in accordance with generally accepted accounting principles. City, or its audit representative, shall have the right at any reasonable time to inspect, copy, and audit the records, vouchers, and their source documents under any resulting Agreement. The records shall be available for City's inspection and audit for a period of three (3) years following the termination of any resulting Agreement.

20. Compliance with the Immigration Reform and Control Act (IRCA) of 1986

Proposer understands and acknowledges the applicability of the IRCA to it. Proposer shall comply with the IRCA in performing any resulting Agreement and shall permit City to verify such compliance.

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21. Lawful Presence Requirement

Pursuant to A.R.S. §§ 1-501 and 1-502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

22. Legal Worker Requirements

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

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

23. Equal Employment Opportunity

A. In order to do business with the City, Contractor/Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity requirements. Contractor/Consultant will direct any questions in regard to these requirements to the Equal Employment Department, (602) 262-6790.

For a Contractor/Consultant with 35 employees or less:

B. Any Contractor/Consultant in performing under any resultant Agreement 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 Contractor/Consultant 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

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Consultant further agrees that this clause will be incorporated in all subcontracts related to any resulting Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with any resulting Agreement. Contractor/Consultant further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of any resulting agreement entered into by supplier/lessee.

-----OR-----

For a Contractor/Consultant with more than 35 employees:

B. Any Contractor/Consultant in performing under any resultant Agreement 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 Consultant 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 Contractor/Consultant 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 any resulting contract. Contractor/Consultant further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of any resulting Agreement entered into by supplier/lessee. The Contractor/Consultant 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.

C. Documentation. Contractor/Consultant may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

D. 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.

24. Background Screening

Proposer will be required to conduct background screening as follows:

A. **Contract Worker Background Screening:** Proposer agrees that all contract workers and subcontractors (collectively "Contract Worker(s)") that Proposer

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furnishes to City pursuant to any resulting Agreement shall be subject to background and security checks and screening (collectively “Background Screening”) at Proposer’s sole cost and expense as set forth in this Section. The Background Screening provided by Proposer shall comply with all applicable laws, rules and regulations. Proposer 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 any resulting Agreement. City in no way warrants that these minimum requirements are sufficient to protect Proposer from any liabilities that may arise out of Proposer’s services under any resulting Agreement or Proposer’s failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Proposer 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 any resulting Agreement.

- B. **Background Screening Requirements and Criteria:** Because of the varied types of services performed, City has established three levels of risk and associated Background Screening. The risk level and Background Screening required under any resulting Agreement is **Standard Risk and Background Screening**.
- a) **Minimum Risk and Background Screening (“Minimum Risk”):** A Minimum Risk Background Screening shall be performed when the Contract Worker: (i) will not have direct access to City facilities or information systems; or (ii) will not work with vulnerable adults or children; or (c) when access to City facilities is escorted by City workers. The Background Screening for Minimum Risk shall consist of the screening required by A.R.S. § 41-4401 to verify legal Arizona worker status.
 - b) **Standard Risk and Background Screening (“Standard Risk”):** A Standard Risk Background Screening shall be performed when the Contract Worker’s work assignment will: (i) require a badge or key for access to City facilities; or (ii) allow any access to sensitive, confidential records, personal identifying information or restricted City information; or (iii) allow unescorted access to City facilities during normal and non-business hours. The Background Screening for this Standard Risk level shall include the Background Screening required for the Minimum Risk level and a background check for real identity/legal name, and shall include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contract Worker has lived at any time in the preceding seven (7) years from the Contract Worker’s proposed date of hire.
 - c) **Maximum Risk and Background Screening (“Maximum Risk”):** A Maximum Risk Background Screening shall be performed when the Contract Worker’s work assignment will: (i) have any contact with vulnerable people such as children, youth, elderly, or individuals with disabilities; or (ii) have any

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responsibility for the receipt or payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or (iii) have unescorted access to City data centers, money rooms, or high-value equipment rooms; or (iv) have access to private residences; or (v) have access to Homeland Defense Bureau identified critical infrastructure sites/facilities. The Background Screening for this Maximum Risk level shall include the Background Screening required for the Standard Risk level, plus a sexual offender search, a credit check, and driving record search for the preceding seven (7) years from the Contract Worker's proposed date of hire. Contract Workers who work directly with children or vulnerable adults are also subject to fingerprint verification through the Arizona Department of Public Safety, as mandated by Phoenix City Code, § 2-45.6.

- C. **Proposer Certification; City Approval of Maximum Background Screening:** By executing any resulting Agreement, Proposer certifies and warrants that Proposer has read the Background Screening requirements and criteria in this Section, understands them and that all Background Screening information furnished to City is accurate and current. Also, by executing any resulting Agreement, Proposer further certifies and warrants that Proposer has satisfied all such Background Screening requirements for the Minimum Risk and Standard Risk Background Screenings as required. In addition, for Maximum Risk Background Screening, Proposer shall furnish to PCCD Security Systems Supervisor for City's review and approval such Background Screenings for any Contract Worker considered for performing services under any resulting Agreement where human safety or facility security is classified as a Maximum Risk level. The subject Contract Worker shall not apply for the appropriate City identification and access badge or keys until Proposer has received City's written acceptance of the subject Contract Worker's Maximum Risk Background Screening. City may, in its sole discretion, accept or reject any or all of the Contract Workers proposed by Proposer for performing work under any resulting Agreement. A Contract Worker rejected for work at a Maximum Risk level under any resulting Agreement shall not be proposed to perform work under other City contracts or engagements without City's prior written approval.
- D. **Terms of This Section Applicable to all of Proposer's Contracts and Subcontracts:** Proposer shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under any resulting Agreement, including, but not limited to, supervision and oversight services.
- E. **Materiality of Background Screening Requirements; Indemnity:** The Background Screening requirements of this Section are material to City's entry into any resulting Agreement and any breach of this Section by Proposer shall be deemed a material breach of any resulting Agreement. In addition to the indemnity provisions set forth in Section VI, No. 40, Proposer shall defend, indemnify and hold harmless City for any and all Claims (as defined in Section VI, No. 40) arising out of this Background Screening Section including, but not limited to, the

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disqualification of a Contract Worker by Proposer or City for failure to satisfy this Section.

- F. **Continuing Duty; Audit:** Proposer's obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of any resulting Agreement. Proposer shall notify City immediately of any change to a Maximum Risk Background Screening of a Contract Worker previously approved by City. Proposer shall maintain all records and documents related to all Background Screenings and City reserves the right to inspect, copy, and audit Proposer's compliance records in accordance with this Section at any reasonable time. The records shall be available for CITY's inspection and audit for a period of three (3) years following the termination of any resulting Agreement.

25. 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 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 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.

- A. **Badge Access Procedures:** An authorized City badge application form is available at the City of Phoenix, PCCD Operations Center, 100 North 3rd Street, North Building, Phoenix, AZ 85004-2231. Each Contract Worker (as defined herein) who is furnishing Standard Risk (as defined herein) or Maximum Risk (as defined herein) services under any resulting Agreement shall submit to the PCCD Operations Center: (i) a fully completed and authorized City badge application form; (ii) a check, in the initial badge fee amount listed below, made payable to the "City of Phoenix"; and (iii) two forms of identification. One form of identification must be a government issued credential with an accompanying photograph. The second form of identification must be a valid passport; military issued identification card; immigration and naturalized services identification card; social security card; or, an original birth certificate. After receipt of the badge application and payment, the Contract Worker will proceed to the PCCD Operations Center for processing of the badge application and issuance of the badge. 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 within five (5) business days from initial submission of the badge application or the subject Contract Worker's badge application shall be rejected.
- B. **Key Access Procedures:** If the Contract Worker's services required keyed access to enter a City facility(s), a separate key issue/return form must be completed and submitted by Proposer for each key issued. The key issue/return form is available at the PCCD Operations Center and the completed form shall be submitted to the PCCD Operations Center at the above address.

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- C. **Stolen or Lost Badges or Keys:** Proposer shall report lost or stolen badges or keys to their local police department and must obtain a police department report (PDR) prior to reissuance of any lost or stolen badge or key. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees listed below prior to issuance of a new badge or key.
- D. **Return of Badges or Keys:** All badges and keys are the property of City and must be returned to City at the PCCD Operations Center 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 any resulting Agreement. Proposer 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 any resulting Agreement.
- E. **Proposer's Default; Liquidated Damages; Reservation of Remedies for Material Breach:** Proposer's default under this Section shall include, but is not limited to, the following: (i) Contract Worker gains access to a City facility(s) without the proper badge or key; (ii) Contract Worker uses a badge or key of another to gain access to a City facility; (iii) Contract Worker commences services under any resulting Agreement without the proper badge, key, or Background Screening; (iv) Contract Worker or Proposer submits false information or negligently submits wrong information to City to obtain a badge, key or applicable Background Screening; or (v) Proposer fails to collect and 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 any resulting Agreement. Proposer 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, Proposer agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by City. The parties agree that Proposer'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 City at law or in equity, Proposer shall be liable for and shall pay to City the sum of one thousand dollars (\$1,000.00) for each breach by Proposer of this Section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to City at the time and making of any resulting Agreement in the event that Proposer 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 Proposer breaches this Section. The parties further agree that three (3) breaches by Proposer of this Section arising out of any default within a consecutive period of three (3) months or three (3) breaches by Proposer of this Section arising out of the same default within a period of twelve (12) consecutive months shall constitute a material breach of any resulting Agreement by Proposer and City expressly reserves all of its

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rights, remedies and interests under any resulting Agreement, at law and in equity including, but not limited to, termination of any resulting Agreement.

- F. **Badge and Key Fees:** The following constitute the badge and key fees under any resulting Agreement. City reserves the right to amend these fees upon thirty (30) days prior written notice to Proposer.

Initial Badge Fee:	\$ 20.00	per applicant
Replacement Badge Fee:	\$ 20.00	per badge
Lost / Stolen Badge Fee:	\$ 20.00	per badge
Replacement Key Fee:	\$ 10.00	per key
Lost / Stolen Key Fee:	\$ 10.00	per key
Replacement Locks	\$ 15.00	per lock

26. Health, Environmental and Safety Requirements:

The Proposer's products, services and facilities shall be in full compliance with all applicable federal, state and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City. The City shall have the right to inspect operations conducted by the Proposer or their subcontractor in the performance of any resultant contract.

27. Force Majeure:

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under any resulting Contract if and to the extent that such party's performance of any resulting Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure shall not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.

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 such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision, thereby invoking its provisions. 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 any resulting Contract.

28. Damage to City Property:

Proposer shall perform all work so that no damage to the building or grounds results. Proposer shall repair any damage caused to the satisfaction of the City at no cost to the City.

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29. Delay in Exercising Contract Remedy

Failure or delay by the City to exercise any right, power or privilege shall not be deemed a waiver thereof.

30. Quality and Acceptability of Work

The PCCD Director is responsible for determining the quality and acceptability of any work performed under any resulting Agreement. If, in the opinion of the Director, performance becomes unsatisfactory, the City shall notify the Proposer in writing.

The Proposer will have 5 working days from the time of notification to correct any specific instance of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within the time specified above, the City shall have the immediate right to complete the work to its satisfaction and shall deduct the cost from any balances due from the City or to become due or to bill the Proposer directly. Repeated incidence of unsatisfactory performance may result in liquidated damages being assessed or cancellation of any resulting Agreement for default.

31. Confidentiality of Information:

Proposer shall treat all information furnished by CITY and the results of the project hereunder as confidential. Proposer shall not disclose such information to others without the prior written consent of CITY's authorized representative.

32. Performance Interference

Proposer shall notify the Contract Manager immediately of any occurrence and/or condition that interferes with the full performance of any resultant contract, and confirm it in writing within twenty-four (24) hours.

33. Information Technology

If necessary for the fulfillment of any resulting Agreement, City may provide Proposer with secure remote access to City's information technology infrastructure. Proposer understands and agrees to abide by and enforce with all Proposer's employees, agents and subcontractors, all City Administrative Regulations, City of Phoenix Information Technology Services Department Security Standards, and PCCD Security Standards regarding access and usage of the City's information technology infrastructure, and will only use such access for the purpose of fulfilling the requirements of any resulting Agreement. Proposer's employees, agents and subcontractors must receive approval from the City and City shall determine accessibility and limitations of City's information technology infrastructure.

Current copies of PCCD Security Standards for the access and usage of the City's information technology infrastructure are available upon request.

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34. Confidentiality and Data Security

All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Proposer in connection with this any resulting Agreement is confidential, proprietary information owned by the City. Except as specifically provided in any resulting Agreement, the Proposer shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager or his/her designee.

Personal identifying information, financial account information, protected health information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Proposer must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices, handheld devices, networking devices, removable storage devices, or other electronic media, as well as data in transit, such as during email or file transfer.

When personal identifying information, financial account information, protected health 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. Proposer must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal. This includes implementing and monitoring compliance with policies and procedures that require the redaction, destruction, erasure, or other disposal of paper documents and electronic media containing personal identifying information, financial account information, protected health information, or restricted City information so that these types of information cannot practicably be read or reconstructed. Proposer will provide the City with its information security policies and procedures regarding the redaction, destruction, erasure, or other disposal of documents and information.

In the event that data collected or obtained by the Proposer in connection with any resulting Agreement is suspected to have been compromised, Proposer shall notify the contracting City department immediately. Proposer agrees to reimburse the City for any costs incurred by the City to investigate and respond to potential breaches of this data, including, where applicable, the cost of notifying individuals who may be impacted by the breach, attorneys' fees, and for any monetary damages or penalties the City is assessed. In case of a breach or critical breach of the City's information, it will be the City, not the Proposer that will inform any and all individuals affected by any such breach. Only upon prior written consent of the City, or at the specific direction of the City, will the Proposer notify individuals affected by a breach or critical breach of the City's information.

Proposer agrees that the City may assess or test the security of any applications, web services, or computerized systems created or provided by the Proposer that process,

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store, or transmit City information. If the City finds vulnerabilities that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS) in these applications, web services, or computerized systems, the Proposer agrees to remediate the vulnerability at no cost to the City and within an agreed-upon timeframe not to exceed 90 days. To clarify, the Proposer must remediate found vulnerabilities in computerized systems they provide; Proposer is **not** liable for remediating any vulnerability found in the City's network or computing infrastructure used to support the applications, web services, or systems created or provided by the Proposer.

Proposer agrees to abide by all current applicable legal and industry data security and privacy requirements. These include, but are not limited to, Arizona Revised Statutes §44-7501 — Notification of breach of security system; Arizona Revised Statutes §44-7601 — Discarding and disposing of records containing personal identifying information; Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules; Health Information Technology for Economic and Clinical Health (HITECH) Act, and Payment Card Industry Data Security Standards.

Proposer agrees to demonstrate that they have adequate controls and safeguards when they host or process personal identifying information, financial account information, protected health information, or restricted City information. This may be accomplished through a third-party audit utilizing a widely recognized auditing standard, such as Statement on Standards for Attestation Engagements (SSAE) No. 16, or through earning industry certification, such as ISO/IEC 27001.

By signing and entering any resulting Agreement the Proposer specifically acknowledges that it is responsible for the security of cardholder data that Proposer possesses or otherwise stores, processes or transmits on behalf of the City. Additionally, as a requirement of this contract you must provide to the City a copy of your written Notice to customers that you are responsible for the security of cardholder data that you obtain and otherwise store, process or transmit. Proposer agrees to comply with all City information security and technology policies, standards, and procedures when accessing City networks and computerized systems whether onsite or remotely.

Proposer agrees that the requirements of this Section shall be incorporated into all subcontractor/subconsultant agreements entered into by the Proposer. 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 any resulting Agreement without notice.

The obligations of Proposer under this Section shall survive the termination of any resulting Agreement.

35. Fund Appropriation Contingency

The Proposer recognizes that any Agreement entered into shall commence upon the day first provided and continue in full force and effect until termination in accordance

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with its provisions. The Proposers herein recognize that the continuation of any Agreement after the close of any given fiscal year of the City of Phoenix, which fiscal years end on June 30 of each year, shall be subject to the approval of the budget of the City of Phoenix providing for or covering such Agreement item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.

36. Integration Clause

Any resulting 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 any resulting Agreement, and no party hereto shall be bound by or liable for any statement of intention not so set forth.

37. Entire Agreement; Modification (No Oral Modification):

Any resulting Agreement, and any Exhibits, Attachments, or Schedules attached hereto, constitute the full and complete understanding and agreement of the parties. There shall be no oral alteration or modification of any resulting Agreement; resulting Agreement and its terms, may not be modified or changed except in writing signed by both parties.

38. Alteration in Character of Work; Additional Work:

CITY shall not be responsible for any oral instructions made by any employees or officers of CITY regarding performance under this Agreement. Any minor changes in plans, specifications or work scope shall be in the form of a written addendum furnished to Proposer and Department Director or Designee for signature. Whenever an alteration in the character of work results in a substantial change in the nature of services, thereby materially increasing or decreasing the cost of the performance, the work will be performed in accordance with the resulting Agreement. Before beginning to perform any substantially changed or altered work, an Amendment evidencing such changes shall be executed by CITY and Proposer.

When authorized by an executed Amendment, additional work shall be compensated at a rate or for a fee mutually agreed upon by the parties.

39. Special Event Consideration

In the event that the PCCD shall seek to bring a major political convention, NCAA tournament, Super Bowl, NBA All-Star Game or other similar national or international events, the Proposer will agree to modify the terms in any resulting Agreement necessary to allow the PCCD to successfully bid and host such events.

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40. Indemnification and Insurance Requirements

Indemnification

Proposer shall indemnify, defend, save and hold harmless the City of Phoenix 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 Proposer 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 such proposer 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 Proposer from and against any and all claims. It is agreed that Proposer will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of any resulting contract, the Proposer agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Proposer for the City.

Insurance Requirements

Proposer and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under any resulting 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 the Proposer, his agents, representatives, employees or subcontractors.

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

A. Minimum Scope and Limits of Insurance

Proposer 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.

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- 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 the Proposer".

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of any resultant Contract.

- Combined Single Limit (CSL) \$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 the Proposer, including automobiles owned, leased, hired or borrowed by the Proposer".

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	

- Each Accident \$100,000
- Disease – Each Employee \$100,000
- Disease – Policy Limit \$500,000

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

4. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

B. Additional Insurance Requirements

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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 the Proposer even if those limits of liability are in excess of those required by any resulting Agreement.
2. The Proposer'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 the resulting Agreement, the Proposer must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to **Phoenix Convention Center, Management Services Section, Attn: Celeste Mims, 100 N. 3rd Street, Level 2A, Phoenix, Arizona 85004-2231.**

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 the Proposer from potential insurer insolvency.

E. Verification of Coverage

Proposer shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by any resulting Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

All certificates required by any resulting Agreement shall be sent directly to **Phoenix Convention Center, Management Services Section, Attn: Celeste Mims, 100 N. 3rd Street, Level 2A, Phoenix, Arizona 85004-2231.** The City project/contract 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 any resulting Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

F. Subcontractors

Proposers' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Proposer shall furnish to the City separate certificates and

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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 any resulting Agreement shall be made by the Law Department, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

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Attachments

- Attachment A – Affidavit
- Attachment B – Business Contact Information
- Attachment C – Cost Proposal Format

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Attachment A
AFFIDAVIT

The undersigned Proposer hereby submits to the City the proposal enclosed here for the right to provide Sports Facility Consulting Services at the PCCD, based upon all terms and conditions set forth in the City's Request for Proposal (RFP) documents, including attachments. Proposer further specifically agrees hereby to provide the Sports Facility Consulting Services in the manner set forth in the proposal submitted by the Proposer.

The undersigned Proposer represents and understands as follows:

- A. Proposer acknowledges that 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 of the proposal being submitted and the Agreement to be entered into.
- B. Proposer acknowledges that the City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by Proposer.
- C. Proposer hereby acknowledges that Proposer has read and fully understands all the provisions and conditions set forth in the proposal documents upon which the submitted proposal is based.
- D. Proposer acknowledges that the following forms and information are completed and made part of Proposer's proposal package:
 - 1. Cover/ Transmittal Letter
 - 2. Affidavit (Attachment A)
 - 3. Business Contact Information (Attachment B)
 - 4. Cost Proposal (Attachment C) (separately sealed envelope)
 - 5. Business and Financial References (three of each for a total of six)
 - 6. Experience and Qualifications Statement
 - 7. Operations Plan
 - 8. Exceptions
 - 9. Confidential Information
 - 10. Additional Information
 - 11. Opinion from Legal Counsel
- E. This proposal may be withdrawn by requesting such withdrawal in writing at any time prior to **Thursday, January 7, 2016, 12:00 noon Phoenix Local Time**, but may not be withdrawn after such date and time.
- F. The City reserves the right to reject any and all proposals and to accept that proposal which in its judgment will provide the best quality of service to the City at reasonable rates.

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- G. This proposal is valid for a minimum period of 120 days subsequent to the RFP closing date.
- H. 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 submittal.

Proposer hereby warrants that: (1) Proposer has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of this RFP process; and (2) the contents of this proposal as to compensation, terms or conditions, 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.

Proposer further says that, to the best of his/her knowledge, the information provided in the subsequent business information questionnaire is true and correct and that neither the undersigned applicant nor any partner, joint venturer, corporate officer or managing employee has ever been convicted of a felony or a crime involving moral turpitude.

Name of Proposer (Legal Name): _____

Signature of Authorized Person: _____

Title: _____

Business Address of Proposer: _____

Date: _____

NOTARIZED

Signed and sworn before me this ____ day of _____, 2016.

Notary Signature: _____

My Commission Expires: _____

Affix Seal:

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**Attachment B
Business Contact Information**

Proposers must provide a business contact and alternate that represents the Proposer and can answer questions related to Proposer's submittal under this RFP.

Name: _____

Title: _____

Phone: _____

Fax: _____

Address: _____

Email: _____

Alternate Business Contact

Name: _____

Title: _____

Phone: _____

Fax: _____

Address: _____

Email: _____

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**Attachment C
Cost Proposal Format**

The format for cost proposals must indicate the overall costs for completing the work identified in the Scope of Work (Section V). Hourly rates are to be inclusive of all labor, equipment, materials, and other associated costs including all expenses for wages, supervisory differentials, payroll taxes, insurance, benefits and all overhead burdens associated with providing the proposed services. After contract award, the City and successful Proposer will determine which expenses will be reimbursed. Proposers must identify the percentage of work to be performed by each position (totaling 100%).

Throughout the term of the resultant Agreement, the successful Proposer may be required to submit deliverables, which will be determined after contract award.

Subcontracting will be allowed, but the prime consultant will be responsible for performing at least 51% of the work. Identify the name of any sub-consultants that may be utilized.

PRIME CONSULTANT:

Position	Hourly Rate	Percentage of Work
_____	\$ _____	_____ %
_____	\$ _____	_____ %

SUB-CONSULTANT:

Position	Hourly Rate	Percentage of Work
_____	\$ _____	_____ %
_____	\$ _____	_____ %

(Proposer may add additional lines as necessary)

Total: _____ %
(must equal 100%)