

# **Park Central Community Facility District**

## **DISTRICT ENGINEERING SERVICES PARK PLACE COMMUNITY FACILITY DISTRICT CONTRACT NO.**

The Park Central Community Facility District ("CFD") and EPS Group Inc., an Arizona corporation ("Consultant") enter into this Contract.

### **RECITALS**

The Park Central CFD, Phoenix, Arizona, is authorized and empowered by provisions of A.R.S. Chapter 4 Article 6, Community Facilities Districts contracts for professional services.

The CFD proposes to retain the Consultant for engineering and consulting services related to the Park Central CFD Garage construction.

Park Central CFD and Consultant agree as follows:

This Contract will come into effect only when it has been approved and executed by the CFD.

### **SECTION I - SERVICES OF THE CONSULTANT**

The Consultant will perform professional services to the satisfaction of the CFD with the degree of care and skill that a registered professional in Phoenix, Arizona would exercise under similar conditions.

The CFD proposes to retain the Consultant for the Park Central Community Facility Garage Project ("Garage Project"). The CFD's authorized contracting office will be the City of Phoenix Finance Department.

The Consultant, will perform the services outlined in Exhibit A - Scope of Work.

General scope requirements and standards related to design and construction administration and inspection services are more fully described in the attached Exhibit B - General Scope of Services Requirements and Standards.

### **SECTION II - PERIOD OF SERVICE**

The Contract commences on May 1, 2019 through December 31, 2020. The parties may agree to extend the term if necessary to complete the Garage Project.

### **SECTION III - PAYMENTS TO THE CONSULTANT**

- A. The maximum fee to be paid to the Consultant under this Contract will not exceed \$75,000.
- B. Requests for monthly payments for a project assignment by the Consultant must be submitted on an invoice and accompanied by a project progress report, detailed invoices and receipts, if applicable. Payments for those services negotiated as a lump sum will be made according to the percentage of the work completed during the preceding month. Those services negotiated with a not-to-exceed fee will be paid according to the work effort expended on that service during the preceding month.
- C. All requests for payment must be submitted to the CFD for review and approval. In no event will the CFD pay more than 90 percent of the consultant fee until final acceptance of the construction of the Garage Project.
- D. No compensation to the Consultant will be allowed contrary to Section 2, Chapter XIX of the City of Phoenix Charter.

#### **SECTION IV - THE CFD'S RESPONSIBILITIES**

The CFD will furnish the Consultant at no cost the following information or services for project assignments released under this Contract:

- A. Examination of documents submitted by the Consultant and the prompt rendering of related decisions to avoid unreasonable delay in the progress of the Consultant's work. The CFD will keep the Consultant advised concerning the progress of the CFD's review of the work.
- B. Sufficient copies of all CFD forms required from the Consultant as described in this Contract.
- C. One copy of any maps, records, laboratory tests, survey ties, benchmarks, or other data pertinent to the work. However, the Consultant will be responsible for searching the records and requesting specific drawings or information.
- D. Response to the Consultant's written request for decisions will be made as soon as possible.

#### **SECTION V - GENERAL CONDITIONS**

##### **A. Records/Audit**

- 1. Records of the Consultant's direct personnel payroll and reimbursable expenses pertaining to this Project and records of accounts between the CFD and the Consultant must be kept on the basis of generally accepted accounting principles and must be made available to the CFD and its auditors for up to three years following Final Acceptance of the Project.
- 2. The CFD, its authorized representative, and/or any federal agency, reserves the right to audit the Consultant's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate the Contract Documents and any Change Orders.
- 3. The CFD reserves the right to decrease the Contract Price and/or payments made on this Agreement and/or request reimbursement from the Consultant following final contract payment on this Agreement if, upon audit of the Consultant's records, the audit discloses the Consultant has provided false, misleading, or inaccurate cost and pricing data.
- 4. The Consultant will include a similar provision in all of its contracts with Subconsultants providing services under the Contract Documents to ensure that the CFD, its authorized representative, and/or the appropriate federal agency has access to the Subconsultants' records to verify the accuracy of all cost and pricing data.
- 5. The CFD reserves the right to decrease the Contract Price and/or payments made on this Agreement and/or request reimbursement from the Consultant following final contract payment on this Agreement if the above provision is not included in Subconsultants' contracts, and one or more Subconsultants refuse to allow the CFD to audit their records to verify the accuracy and appropriateness of all cost and pricing data.
- 6. If, following an audit of this Agreement, the audit discloses the Consultant has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Consultant shall be liable for reimbursement of the reasonable, actual cost of the audit.

##### **B. Alteration in Character of Work**

Whenever an alteration in the character of work results in a substantial change in this Contract that materially increases or decreases the scope of services, cost of performance, or project schedule, the work will be performed as directed by the CFD. However, before any modified work is started, a Contract change order or amendment must be approved and executed by the CFD and the Consultant. Additions to, modifications, or deletions from the Consultant's services may be made, and the compensation to be

paid may be adjusted by mutual agreement of the contracting parties. The parties expressly agree that no claim for extra work done or materials furnished by the Consultant will be allowed by the CFD except as provided in writing, and the Consultant will not do any work or furnish any materials not covered by this Contract unless such work is first authorized in writing. Any work or materials furnished by the Consultant without prior written authorization will be at the Consultant's own risk, cost, and expense, and the Consultant agrees that without written authorization, the Consultant will make no claim for compensation for such work or materials furnished.

#### C. Termination

The CFD and the Consultant agree to full performance, except that the CFD reserves the right, at its discretion and without cause, to terminate or abandon any service provided for in this Contract, or abandon any portion of a Project for which services have been performed by the Consultant.

1. If the CFD abandons any part of the services, the CFD will notify the Consultant in writing and immediately after receiving notice, the Consultant must discontinue advancing those services.
2. Upon termination or abandonment, the Consultant will deliver to the CFD all drawings, plans, specifications, special provisions, estimates and other work entirely or partially completed, together with all unused materials supplied by the CFD.
3. The Consultant will appraise the work it has completed and submit that appraisal to the CFD for evaluation. The CFD will have the right to inspect the Consultant's work to appraise the work completed.
4. The Consultant will receive full compensation for services performed to the date of termination. The fee will be paid in a mutually agreeable amount as provided in Section III of this Contract. If there is no mutual agreement, the final determination will be made as provided in Section VI. However, in no event will the fee exceed that set forth in Section III or as amended in accordance with Section VI, Paragraph B. The CFD will make the final payment within 60 days after the Consultant has delivered the last of the partially completed items and the final fee has been agreed upon.
5. If the CFD is found to have improperly terminated the Contract for cause or default, the termination will be converted to a termination for convenience in accordance with the provisions of this Contract.

#### D. Indemnification Clause

Consultant ("Indemnitor") must indemnify, defend, save and hold harmless the CFD and the City of Phoenix including their officers, officials, agents and employees ("Indemnitee") from any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees and costs of claim processing, investigation and litigation) ("Claims") caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Consultant or any of its owners, officers, directors, agents, employees, or subconsultants in connection with this Contract. This indemnity includes any claim or amount arising out of or recovered under workers' compensation law or on account of the failure of Consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Consultant must indemnify Indemnitee from and against any and all Claims, except those arising solely from Indemnitee's own negligent or willful acts or omissions. Consultant is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this contract, Consultant agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to this Contract. The obligations of Consultant under this provision survive the termination or expiration of this Contract.

#### E. Insurance Requirements

The Consultant and subconsultants must procure insurance against claims that may arise from or relate to performance of the work hereunder by Consultant and its agents, representatives, employees and subconsultants. Consultant and subconsultants must maintain that insurance until all of their obligations have been discharged, including any warranty periods under this Contract.

These insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The CFD in no way warrants that these minimum limits contained are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this Contract by the Consultant, his agents, representatives, employees, or subconsultants. The Consultant is free to purchase additional insurance it may determine necessary.

1. Minimum Scope and Limits of Insurance

The Consultant must 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.

a. **Commercial General Liability – Occurrence Form**

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

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

1. The policy must be endorsed to include the following additional insured language: "The CFD of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant."
2. Consultant's subconsultants must be subject to the same minimum requirements identified above.

b. **Automobile Liability**

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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1. The policy must be endorsed to include the following additional insured language: "The CFD of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant, including automobiles owned, leased, hired or borrowed by the Consultant."
2. The Consultant's subconsultants must be subject to the same minimum requirements identified in this section.

c. **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

1. Policy must contain a waiver of subrogation against the CFD of Phoenix.
2. The Consultant's subconsultants must be subject to the same minimum requirements identified in this section.
3. This requirement will not apply when a Consultant or subconsultant is exempt under A.R.S. 23-902(E), **AND** when the Consultant or subconsultant executed the appropriate sole proprietor waiver form.

**d. Professional Liability (Errors and Omissions Liability)**

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

1. In the event that any professional liability insurance required by this Contract is written on a claims-made basis, the Consultant warrants that any retroactive date under the policy will 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 years beginning at the time work under this Contract is completed.

**e. Professional Liability (Errors and Omissions Liability) for Subconsultants** (Applicable to projects with an estimated construction cost of \$5 million or greater). In addition to the insurance requirements for the Consultant, the Consultant's registered sub-consultants (including structural, civil, mechanical, plumbing, electrical engineering, landscape architecture, survey, geotechnical and materials testing) are required to carry Professional Liability insurance as follows:

1. Estimated Project Construction Cost of \$5,000,000 to \$25,000,000:  
Each registered subconsultant will carry:  
Each Claim \$1,000,000  
Annual Aggregate \$1,000,000

**2. Additional Insurance Requirements**

The policies must include, or be endorsed to include, the following provisions:

- a. On insurance policies where the CFD of Phoenix is named as an additional insured, the CFD of Phoenix is an additional insured to the full limits of liability purchased by the Consultant even if those limits of liability are in excess of those required by this Contract.
- b. The Consultant's insurance coverage must be primary insurance and non-contributory with respect to all other available sources.
- c. With regard to general liability, the CFD of Phoenix is named as an additional insured for both products completed operations and premises operations.

**3. Notice of Cancellation**

For each insurance policy required by the insurance provisions of this Contract, the Consultant must provide to the CFD, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, hand delivered or sent directly to:

CFD of Phoenix  
Office of the CFD Engineer  
Design and Construction Procurement  
200 W. Washington Street, Sixth Floor  
Phoenix, Arizona 85003-1611

**4. Acceptability of Insurers**

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

**5. Verification of Coverage**

The Consultant must furnish the CFD with certificates of insurance (ACORD form or equivalent approved by the CFD) as required by this Contract. 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 CFD before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to the Finance Department, Administration Division, 251 W. Washington Street, 8th Floor, Phoenix, Arizona 85003-1611. The CFD project/contract number and project description must be noted on the certificate of insurance. The CFD reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CFD'S RISK MANAGEMENT DIVISION.**

6. Approval

Any modification or variation from the insurance requirements in this Contract must be made by the Law Department, whose decision is final. Such action will not require a formal Contract amendment, but may be made by administrative action.

F. Cooperation and Further Documentation

The Consultant agrees to provide the CFD any other executed documents reasonably requested by the CFD to implement the intent of this Contract.

G. Notices

Unless otherwise provided, demands under this Contract must be in writing and will be deemed to have been given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the date of the postmark if sent by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To CFD: Denise Olson, CFD District Treasurer  
City of Phoenix Finance Department  
251 W. Washington Street, 8th Floor  
Phoenix, Arizona 85003-1611

To Consultant Woody C. Scoutten, PE  
EPS Group  
125 S. Avondale Boulevard  
Suite 115  
Avondale, AZ 85323

H. Successors and Assigns

The CFD and the Consultant each binds itself, its partners, successors, assigns, and legal representatives to the other party to this Contract and their partners, successors, assigns, and legal representatives with respect to all covenants of this Contract. Neither the CFD nor the Consultant may assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event is any contractual relation created between any third party and the CFD.

I. Disputes

The CFD Treasurer will make the final determination at the administrative level of any dispute arising out of an interpretation of this Contract that is not resolved by mutual agreement.

J. Project Document and Copyrights

1. CFD Ownership of Project Documents

All work products (electronically or manually generated) including, but not limited to: plans, specifications, cost estimates, tracings, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes which reflect all final drawings, and other related documents that are prepared for this Contract ("Documents") are the property of the CFD and are to be delivered to the Project Manager before the final payment is made to the Consultant. If these Documents are altered, modified or adapted without the written consent of the Consultant, which consent the Consultant may not unreasonably withhold, the CFD agrees to hold the Consultant harmless to the extent permitted by law from the legal liability arising out of the CFD's alteration, modification or adaptation of the Documents.

2. Consultant to Retain Copyrights

The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the Consultant, its subconsultants or personnel, in performing under this Contract or arising out of project assignments will belong to the Consultant.

3. License to CFD for Reasonable Use

With this Contract, the Consultant and its subconsultants grant a license to the CFD, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Documents, works or deliverables developed or created as a result of project assignments and this Contract. This license also includes the making of derivative works. If derivative works require the CFD to alter or modify the Documents, then the provisions of Section J (1) apply.

4. Documents to Bear Seal

The Consultant and its subconsultants must endorse by professional seal all plans, works, and deliverables prepared by each for this Contract as required by state law.

K. CFD's Right of Cancellation

This Contract is subject to cancellation by the CFD as provided by Arizona Revised Statutes Section 38-511.

L. City of Phoenix Equal Employment Opportunity Requirement

1. To do business with the CFD, the Consultant must comply with Phoenix City Code, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. The Consultant will direct any questions regarding these requirements to the Equal Opportunity Department, (602) 262-6790.
2. Any Consultant in performing under this Contract must 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, and will adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action includes but is not 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 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 labor or services in connection with this Contract.

The Consultant further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this Contract entered into by supplier or lessee.

If the Consultant employs more than thirty-five employees, the following language will also apply:

The 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 must ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

3. *Documentation.* The Consultant may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
4. *Monitoring.* The City of Phoenix Equal Opportunity Department will 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.

M. Independent Contractor

The Consultant is an independent contractor. Any provisions in this Contract that may appear to give the CFD the right to direct the Consultant as to the details of accomplishing the work or to exercise a measure of control over the work means that the Consultant will follow the wishes of the CFD as to the results of the work only. These results must comply with all applicable laws and ordinances.

N. Force Majeure

If either party is delayed or prevented from the performance of any act required under this Contract by reason of acts of God or other cause beyond the control and without fault of the party (financial inability excepted), performance of that act will be excused, but only for the period of the delay. The time for performance of the act will be extended for a period equivalent to the period of delay.

O. Compliance with Federal Laws

The Consultant understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The Consultant agrees to comply with these laws in performing this Contract and to permit the CFD to verify such compliance.

P. Legal Worker Requirements

The CFD is prohibited by A.R.S. § 41-4401 from awarding a contract to any Consultant who fails, or whose subconsultants fail, to comply with A.R.S. § 23-214(A). Therefore, the Consultant agrees that:

1. The Consultant and each subconsultant it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.
2. A breach of a warranty under paragraph 1 will be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract.
3. The CFD retains the legal right to inspect the papers of any Consultant or subconsultant employee who works on the Contract to ensure that the Consultant or subconsultant is complying with the warranty under paragraph 1.

Q. Lawful Presence Requirement

Pursuant to A.R.S. §§ 1-501 and 1-502, the CFD 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 CFD-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.



R. Covenant Against Contingent Fees

The Consultant warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the CFD Board, or any employee of the CFD or City of Phoenix has any interest, financially, or otherwise, in the consulting firm. For breach or violation of this warrant, the CFD will have the right to annul this Contract without liability, or at its discretion to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

S. Non-Waiver Provision

The failure of either party to enforce, or to require performance of the other party, of any of the provisions of this Contract may not be construed as a waiver of any provision, and that will not affect the validity of any part of this Contract, or the right of either party to enforce every provision.

T. Conflict of Interest

To evaluate and avoid potential conflicts of interest, the Consultant must provide written notice to the CFD of any work or services performed by the Consultant for third parties that may involve or be associated with any real property or personal property owned or leased by the CFD. That notice must be given seven business days prior to commencement of the services by the Consultant for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure must be sent to:

CFD of Phoenix  
Finance Department  
Administration Division  
251 W. Washington Street, 8th Floor  
Phoenix, Arizona 85003-1611

Actions that are considered to be adverse to the CFD under this Contract include, but are not limited to:

1. Using data, as defined below, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the CFD or City of Phoenix;
2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the CFD or City of Phoenix; and
3. Using data to produce income for the Consultant or its employees independently of performing the services under this Contract, without the prior written consent of the CFD.

The Consultant represents that except for those persons, entities and projects identified to the CFD, the services to be performed by the Consultant under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the CFD.

The Consultant's failure to provide a written notice and disclosure of the information as set forth in this Section will constitute a material breach of this Contract.

U. Data Confidentiality and Data Security

Data Confidentiality. As used in the Contract, "data" means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to the Consultant or its subconsultants in the performance of this Contract.

The parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Consultant or its subconsultants in connection with the Consultant's or its subconsultant's performance of this Contract is confidential and proprietary information belonging to the CFD.

Except as specifically provided in this Contract, the Consultant or its subconsultants must not divulge data to any third party without prior written consent of the CFD. The Consultant or its subconsultants must not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided the Consultant or its subconsultants have first given the required notice to the CFD:

1. Data which was known to the Consultant or its subconsultants prior to its performance under this Contract unless such data was acquired in connection with work performed for the CFD;
2. Data which was acquired by the Consultant or its subconsultants in its performance under this Contract and which was disclosed to the Consultant or its subconsultants by a third party, who to the best of the Consultant's or its subconsultant's knowledge and belief, had the legal right to make such disclosure and the Consultant or its subconsultants are not otherwise required to hold such data in confidence; or
3. Data which is required to be disclosed by virtue of law, regulation, or court order, to which the Consultant or its subconsultant's are subject.

If the Consultant or its subconsultants are required or requested to disclose data, or any other information to which the Consultant or its subconsultants became privy as a result of any other contract with the CFD, to a third party, the Consultant must first notify the CFD, as set forth in this section, of the request or demand for the data. The Consultant or its subconsultants must give the CFD sufficient facts so that the CFD will have an opportunity to first give its consent or take such action that the CFD may deem appropriate to protect such data or other information from disclosure.

Unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the CFD, the Consultant or its subconsultants must promptly deliver a copy of all data to the CFD. All data will continue to be subject to the confidentiality agreements of this Contract.

The Consultant or its subconsultants assume all liability for maintaining the confidentiality of the data in its possession and agree to compensate the CFD if any of the provisions of this section are violated by the Consultant, its employees, agents or subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court. The Consultant agrees that the requirements of this Section will be incorporated into all subcontracts entered into by the Consultant. A violation of this Section may result in immediate termination of this Contract without notice.

Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted CFD information, whether electronic format or hard copy, must be secured and protected at all times. At a minimum, the Consultant must encrypt or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted CFD 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.

If data collected or obtained by the Consultant or its subconsultants in connection with this Contract is believed to have been compromised, the Consultant or its subconsultants must immediately notify the Project Manager and CFD Engineer. The Consultant agrees to reimburse the CFD for any costs incurred by the CFD to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

The Consultant agrees that the requirements of this Section will be incorporated into all subcontracts entered into by the Consultant. It is further agreed that a violation of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.

The obligations of the Consultant or its subconsultants under this Section will survive the termination of this Contract.

V. Consultant and Subconsultant Background Screening

1. Contract Worker Background Screening

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

2. Background Screening Requirements and Criteria

Because of the varied types of services performed, the CFD has established three levels of risk and associated Background Screening. The general risk level and Background Screening required for this Contract is Minimum Risk. ***Project specific risk levels may be elevated to Standard Risk and Maximum Risk as required by the project.***

A. Minimum Risk and Background Screening ("Minimum Risk")

A minimum risk Background Screening must be performed when the Contract Worker: (i) will not have direct access to CFD facilities or information systems; or (ii) will not work with vulnerable adults or children; or (iii) when access to CFD facilities is escorted by CFD workers. The Background Screening for minimum risk consists of the screening required by Arizona Revised Statutes §§ 41-4401 and following to verify legal Arizona worker status.

B. Standard Risk and Background Screening ("Standard Risk")

A standard risk Background Screening must be performed when the Contract Worker's work assignment will: (i) require a badge or key for access to CFD facilities; or (ii) allow any access to sensitive, confidential records, personal identifying information or restricted CFD information; or (iii) allow unescorted access to CFD facilities during normal and non-business hours. The Background Screening for this standard risk level includes the Background Screening required for the Minimum Risk level and a background check for real identity/legal name, and includes 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 years from the Contract Worker's proposed date of hire.

C. Maximum Risk and Background Screening ("Maximum Risk")

A maximum risk Background Screening must 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 responsibility for the receipt or payment of CFD funds or control of inventories, assets, or records that are at risk of misappropriation; or (iii) have unescorted access to CFD 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 or facilities. The Background Screening for this maximum risk level includes 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 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 Division of Public Safety as mandated by Phoenix CFD Code, § 2-45.6.

3. Consultant Certification; CFD Approval of Maximum Risk Background Screening  
By executing this Contract, the Consultant certifies and warrants that the Consultant has read the Background Screening requirements and criteria in this Section, understands them and that all Background Screening information furnished to the CFD is accurate and current. Also, by executing this Contract, the Consultant further certifies and warrants that the Consultant 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, the **Consultant must furnish to the client division for the CFD's review and approval** such Background Screenings for any Contract Worker considered for performing services under this Contract where human safety or facility security is classified as a Maximum Risk level. The subject Contract Worker must not apply for the appropriate CFD of Phoenix identification and access badge or keys until the Consultant has received the CFD's written acceptance of the subject Contract Worker's Maximum Risk Background Screening. The CFD may, in its sole discretion, accept or reject any or all of the Contract Workers proposed by the Consultant for performing work under this Contract. A Contract Worker rejected for work at a Maximum Risk level under this Contract must not be proposed to perform work under other CFD contracts or engagements without CFD's prior written approval.
4. Terms of This Section Applicable to all of Consultant's Contracts and Subcontracts  
The Consultant must include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Contract including, but not limited to, supervision and oversight services.
5. Materiality of Background Screening Requirements; Indemnity  
The Background Screening requirements of this Section are material to CFD's entry into this Contract and any breach of this Section by the Consultant will be deemed a material breach of this Contract. In addition to the indemnity provisions set forth in Section VI, Paragraph D, the Consultant will defend, indemnify and hold harmless the CFD for any and all Claims (as defined in Section VI, Paragraph D), arising out of this Background Screening Section including, but not limited to, the disqualification of a Contract Worker by the Consultant or the CFD for failure to satisfy this Section.
6. Continuing Duty; Audit  
The Consultant's obligations and requirements that Contract Workers satisfy this Background Screening will continue throughout the entire term of this Contract. The Consultant must notify the CFD immediately of any change to a Maximum Risk Background Screening of a Contract Worker previously approved by the CFD. The Consultant must maintain all records and documents related to all Background Screenings and the CFD reserves the right to audit the Consultant's compliance with this Section pursuant to Section VI, Paragraph A.

X. Contract Worker Access Controls, Badge and Key Access Requirements

1. **A Contract Worker (Consultant's employees and subconsultants) must not be allowed to begin work in any CFD facility without:** (A) The prior completion and CFD's acceptance of the required background screening; and (B) When required by a Standard or Maximum Risk assessment, the Contract Worker's receipt of a CFD issued badge. A badge will be issued to a Contract Worker solely for access to the CFD facilities to which the Contract Worker is assigned. Each Contract Worker who enters a CFD facility must use the badge issued to the Contract Worker.
2. Badge Access Procedures  
An authorized CFD of Phoenix badge application form is available at the CFD of Phoenix Badging Office, 251 W. Washington St., 1<sup>st</sup> Floor, Phoenix, AZ 85003-1611. Each Contract Worker who is furnishing Standard Risk or Maximum Risk services under this Contract must submit to the CFD of Phoenix, Banking & Cashiering Division, 251 W. Washington, 3<sup>rd</sup> Floor, Phoenix, AZ 85003-1611: (i) a fully completed and authorized CFD of Phoenix badge application form; (ii) a check in the initial

badge fee amount listed below made payable to the "CFD 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 badging office for processing of the badge application and issuance of the badge. The CFD will not process the badge application until the Contract Worker satisfies the required Background Screening. The Contract Worker must comply with all requirements and furnish all requested information within five business days after submitting the badge application or the badge application will be rejected.

3. Key Access Procedures

If the Contract Worker's services require keyed access to enter CFD facilities, a separate key issue/return form must be completed and submitted by the Consultant for each key issued. The key issue/return form is available at and the completed form must be submitted to the badging office at the address above.

4. Stolen or Lost Badges or Keys

The Consultant must report lost or stolen badges or keys to their local police Division and must obtain a police Division report (PDR) prior to re-issuance of any lost or stolen badge or key. A new badge application or key issue form must be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

5. Return of Badges or Keys

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

6. Consultant's Default: Liquidated Damages: Reservation of Remedies for Material Breach

The Consultant's default under this Section includes, but is not limited to the following: (i) Contract Worker gains access to CFD facilities without the proper badge or key; (ii) Contract Worker uses a badge or key of another to gain access to a CFD facility; (iii) Contract Worker commences services under this Contract without the proper badge, key or Background Screening; (iv) Contract Worker or the Consultant submits false information or negligently submits wrong information to the CFD to obtain a badge, key or applicable Background Screening; or (v) Consultant 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 CFD facility or upon the expiration, cancellation or termination of this Contract. The Consultant acknowledges and agrees that the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety and welfare. Accordingly, the Consultant agrees to properly cure any default under this Section within three business days from the date notice of default is sent by the CFD. The parties agree that the Consultant's failure to properly cure any default under this Section will constitute a breach of this Section. In addition to any other remedy available to the CFD at law or in equity, the Consultant will be liable for and will pay to the CFD the sum of \$1,000 for each breach by the Consultant of this Section, ***[client Division or Project Manager may increase the amount as required by the project.]*** The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the CFD at the time and making of this Contract if the Consultant breaches of this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the CFD's actual damages if the Consultant breaches this Section. The parties further agree that three breaches by the Consultant of this Section arising out of any default within a period of three consecutive months or three breaches by the Consultant of this Section arising out of the same default within a period of 12 consecutive months will constitute a material breach of this Contract by the Consultant and the CFD expressly reserves all of its rights, remedies and interests under this Contract, at law and in equity including, but not limited to, termination of this Contract.

7. Badge and Key Fees

The badge and key fee under this Agreement will be \$55.00 whether for initial badge/key or replacements. The CFD reserves the right to amend these fees upon thirty (30) days prior written notice to Consultant.

Y. Jurisdiction

This Contract will be deemed to be made under, and will be construed in accordance with and governed by the laws of Arizona without regard to the conflicts or choice of law provisions. Any action to enforce any provision of this Contract or to obtain any remedy must be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party expressly and irrevocably consents to the jurisdiction and venue of such Court.

Z. Survival

All warranties, representations and indemnifications by the Consultant will survive the completion or termination of this Contract.

AA. Modification

Except as expressly provided to the contrary, no supplement, modification, or amendment of any term of this Contract will be effective unless in writing and signed by the parties as provided in Section V, Paragraph B.

BB. Severability

If any provision of this Contract or its application to any person or circumstance is invalid, illegal or unenforceable to any extent, the remainder of this Contract and its application will not be affected and will be enforceable to the fullest extent permitted by law.

CC. Integration

This Contract expresses the full agreement of the parties, and it merges and supersedes any prior or contemporaneous written or oral agreement between the parties regarding this Contract.

DD. Time is of the Essence

Time of each of the terms, covenants, and conditions of this Contract is expressly made of the essence.

EE. Date of Performance

If the date of performance of any obligation or the last day of any time period provided falls on a Saturday, Sunday, or City of Phoenix holiday, then the time period will extend to the next day that is not a Saturday, Sunday or legal City of Phoenix holiday. Except as may otherwise be provided, any performance will be timely made if completed no later than 5:00 p.m. (Phoenix time) on the day of performance.

FF. Third Party Beneficiary

Nothing in this Contract may be construed to give any rights or benefits in the Contract to anyone other than the CFD and the Consultant, and all duties and responsibilities undertaken under this Contract will be for the exclusive benefit of CFD and the Consultant and not for the benefit of any other party, except the Consultant acknowledges that the City of Phoenix is a third party beneficiary of the contract.

GG. Conflict in Language

All work performed must conform to all applicable City of Phoenix of Phoenix codes, ordinances and requirements.

HH. Labor Compliance Requirement

Some construction projects may be funded solely or in part with federal aid. When these projects occur, they will be subject to Davis-Bacon and Related Acts (DBRA). On all federally assisted projects the Labor Compliance Manager must be notified prior to developing a cost estimate to ensure prevailing wages are considered. The prevailing wage rates and fringe benefit payments, as determined by the federal Secretary of Labor, must be the minimum wages paid to laborers and mechanics employed, or working on the site. When these projects do occur, please contact the City of Phoenix, Planning, Design and Programming Division, Labor Compliance Office at (602) 261-8287 for further instructions.

II. Release of Information – Advertising and Promotion

The Consultant and its subconsultants shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Contract, the services, or any part thereof; or (2) any documentation or the contents thereof, without the prior written consent of the CFD, except as required by law. The name of any site on which services are performed shall not be used in any advertising or other promotional context by the Consultant and its subconsultants without the prior written consent of the CFD.

JJ. Exhibits

The following exhibits are included in this Contract and are incorporated by reference:

Exhibit A –General Scope of Services Requirements and Standards

The parties have executed this Contract on 6/18/2019

Park Central Community Facility District  
an Arizona municipal corporation  
Ed Zuercher, District Manager

EPS Group  
an Arizona Corporation

By:   
District Manager by District Treasurer

By:   
Woody C. Scoutten, PE



## EXHIBIT B

### GENERAL SCOPE OF SERVICES REQUIREMENTS AND STANDARDS

The Consultant's services involving design and construction administration and inspection services may include, but are not limited to, the following general requirements and standards, unless otherwise provided for in the individual scope of services incorporated as a part of a Notice to Proceed for a specific project.

#### DESIGN SERVICES - GENERAL PROJECT

EPS Group will provide the following services during the design, construction, and close-out of the Garage Project:

- Review the Feasibility Report, Preliminary Official Statement, and other documents related to the sale of the bonds.
- Review the construction plans and construction contract for completeness and compliance with CFD statutes and policies.
- Review the Guaranteed Maximum Price for completeness and eligibility of proposed costs.
- Verify that performance and payment bonds have been provided by the Contractor.
- Attend the pre-construction meeting.
- Attend weekly construction progress meetings (12-month construction period).
- Verify that daily inspections of the work are being conducted.
- Conduct periodic inspections during construction (following progress meetings – assume 12 inspections).
- Review and approve all pay requests. Verify that an updated schedule of values, current construction schedule, and lien waivers are provided.
- Review and approve all change orders.
- Review and sign off on monthly "Certificate of Development Manager with Approval of District Engineer for Payment of Project Costs Related to Construction Project" for disbursement of bond and other Trustee funds.
- Verify that as-built drawings and other project close-out documents are provided by the Contractor.
- Attend preliminary and final walk-throughs. Verify that all punchlist items are resolved by obtaining punchlist signed by Contractor and Plaza Inspector.
- Verify that letters of Substantial Completion and Final Acceptance, including warranty information, are prepared by Plaza and provided to the CFD.
- Prepare the "Final Assessment Methodology Report" based on the preliminary report prepared by EPS Group and the final cost of the Garage Project.
- Prepare "Certificate of District Engineer for Completion of Construction Project."
- Review Conveyance documents for District Board and Council action and verify approvals and recordation.
  - Review evidence of conveyance of real public property and easements, including type of document and recording date for proof of District ownership.
  - Verify all related access easements and approvals have been obtained.
- Verify assignment of contractor and material supplier warranties to the District as applicable.
- Compile all documents related to public procurement for design, construction, and other eligible services.
  - Affidavit of Advertisement.
  - Public procurement method and contractor selection process per ARS Title 34.

- Construction Contract properly executed.
- All approved change orders.
- Performance and Payment Bonds.
- Verify Notice of Award, Notice to Proceed, and applicable Building Permits and fees paid.
- Prepare the Summary of Project Costs.
  - Contractor - Perform examination of proof of payment information. Review final billing and lien waivers to confirm unencumbered improvements can be conveyed to the District.
  - Design Engineer and other project professionals who provide services to the Project - Perform examination of the contract and change orders and verify submittal of a proof of payment in the form of a Certification of Costs Charged and Paid. Obtain lien waivers.
  - Summary of Other Eligible Costs– Verify other costs by invoices, check copies, or accounting software generated reports.
- Compile all applicable construction and conveyance documents in one hard copy binder, with electronic back-up, for delivery to District Manager.
- Attend City Council and CFD Board Meetings as needed (assume three meetings).