

REQUEST FOR PROPOSAL

CITY OF TEMPE

REQUEST FOR PROPOSAL : 14-022

RFP ISSUE DATE: July 18, 2013

Commodity Code(s): 245-03

PROCUREMENT DESCRIPTION: Consulting Services to Develop Infrastructure Improvement Plan and Impact Fee Schedules

PROPOSAL DUE DATE/TIME: **Thursday, August 15, 2013 at 3:00 P.M. Local Time**

Late proposals will not be considered.

PROPOSAL RESPONSE MUST BE DELIVERED TO CITY PROCUREMENT OFFICE.

Mailing Address: P.O. Box 5002, Tempe, AZ 85280
Street Address: 20 E. Sixth Street (2nd Floor), Tempe, AZ 85281

Mailing Alert: Firms should use the Street Address to ensure on-time express deliveries. The Mailing Address provided above routes through the City's internal mail distribution center and may impact delivery time.

PRE-PROPOSAL CONFERENCE (if scheduled): Not Needed – Questions shall be submitted via e-mail to the Procurement Officer referenced below.

DEADLINE FOR INQUIRIES: Friday, August 2, 2013 at 5:00 P.M., Local Time

Sealed proposals must be received and in the actual possession of the City Procurement Office on or before the exact Proposal Due Date/Time indicated above. Proposal responses will be opened and each Offeror's name will be publicly read. Prices are not read and shall be kept confidential until award. Late proposals will not be considered.

Proposals must be submitted by a sealed envelope/package with the Request for Proposal number, Offeror's name and address clearly indicated on the envelope/package. **It is critical that the RFP number be included on the front of the envelope to ensure proper handling.**

Proposals must be completed in ink or typewritten and a completed proposal response returned to the City Procurement Office by the Proposal Due Date/Time indicated above. The "Vendor's Offer" (Form 201-B RFP) must be completed and signed in ink. Proposals by electronic transmission, telegraph, mailgram or facsimile will not be considered.

Offerors are asked to immediately and carefully read the entire Request for Proposal and not later than ten (10) days before the Proposal Due Date/Time, address any questions or clarifications to the Procurement Officer identified below:

Michael Greene C.P.M. E-mail: Michael.Greene@tempe.gov Phone No: 480-350-8516

Procurement Officer

Award recommendations are publicly posted to the City Procurement Office web page www.tempe.gov/procurement and at the Procurement Office reception counter.

Submit one (1) original signed and completed proposal response for evaluation purposes. For this specific RFP, seven (7) additional proposal response copies are also to be submitted for evaluation purposes. A late, unsigned and/or materially incomplete proposal response will be considered nonresponsive and rejected.

The City Procurement Office is committed to fair and equal procurement opportunities for all firms wishing to do business with the City and encourages the participation of small and disadvantaged businesses.

MG

Michael Greene, C.P.M.
Central Services Administrator

Vendor's Offer

Form 201-B (RFP)

“Return this Section with your Response”

It is required that Offeror complete, sign and submit the original of this form to the City Procurement Office with the proposal response. An unsigned “Vendor’s Offer”, late proposal response and/or a materially incomplete response will be considered nonresponsive and rejected.

Offeror is to type or legibly write in ink all information required below.

Company Name: <u>TischlerBise, Inc.</u>		
Company Mailing Address: <u>4701 Sangamore Road, S240</u>		
City: <u>Bethesda</u>	State: <u>Maryland</u>	Zip: <u>20816</u>
Contact Person: <u>Carson Bise</u>	Title: <u>President</u>	
Phone No.: <u>(301) 320-6900 Ext. 12</u>	FAX: <u>(301) 320-4860</u>	E-mail: <u>carson@tischlerbise.com</u>
<u>Company Tax Information:</u>		
Arizona Transaction Privilege (Sales) Tax No.: <u>N/A</u> or		
Arizona Use Tax No.: <u>N/A</u>		
Federal I.D. No.: <u>52-1087538</u>		
City & State Where Sales Tax is Paid: <u>Bethesda</u> , <u>Maryland</u>		
If a Tempe based firm, provide Tempe Transaction Privilege (Sales) Tax No.: <u>N/A</u>		

THIS PROPOSAL IS OFFERED BY

Name of Authorized Individual (TYPE OR PRINT IN INK) Carson Bise, AICP

Title of Authorized Individual (TYPE OR PRINT IN INK) President

REQUIRED SIGNATURE OF AUTHORIZED OFFEROR (MUST SIGN IN INK)

By signing this Vendor’s Offer, Offeror acknowledges acceptance of all terms and conditions contained herein and that prices offered were independently developed without consultation with any other Offeror or potential Offeror. In accordance with A.R.S. 35-393, et seq., the Offeror hereby certifies that it does not have scrutinized business operations in Iran or Sudan. Failure to sign and return this form with proposal response will be considered nonresponsive and rejected.

Signature of Authorized Offeror

Date

(H:/RFP 3-2008)

INSTRUCTIONS TO PROPOSERS

Failure to follow these instructions shall result in rejection of proposal for non-responsiveness or cancellation of any Contract awarded.

1. **Preparation of Proposal:**

- A. Proposals shall be submitted to the City of Tempe (“City”) in the sequence specified herein, on the forms attached hereto, including Vendor’s Offer, Form 201-B (RFP).
- B. All proposals shall be submitted on the forms provided in this Request for Proposal, signed by an authorized signer and returned with the proposal response to the City.
- C. Completed and signed proposal forms for offer, acceptance and any solicitation amendments shall be signed by an authorized individual. Such proposal constitutes an irrevocable Offer to sell the good and/or service specified herein. Offeror shall submit all additional data, documentation, or information as requested by the City, signifying its intent to be bound by the terms of the Request for Proposal.
- D. Negligence in preparation of a proposal confers no right of withdrawal. Offeror is solely responsible for seeking clarification of any requirement and presenting accurate information in the proposal response. The City shall not reimburse any costs for a proposal, or its submission, presentation or withdrawal, for any reason.
- E. Offeror shall identify each subcontractor to be utilized in the services and/or work set forth herein, in the proper form as indicated.

2. **Late, Unsigned and/or Incomplete Proposal:** A late, unsigned and/or materially incomplete proposal will be considered nonresponsive and rejected.

3. **Inquiries:** Questions regarding this Request for Proposal shall be directed to the City Procurement Officer identified on the cover page of this document, unless another City contact is specifically named. Inquiries shall be submitted in writing, identifying the appropriate Request for Proposal’s number, page and paragraph at issue. **PLEASE NOTE: Offeror must not place the Request for Proposal’s number on the outside of an envelope containing questions.** Oral responses provided by the City shall have no binding effect or legal effect. Inquiries should be submitted no later than ten (10) days before proposal due date/time. Those received within ten (10) days of the proposal due date/time shall not be considered. The City reserves the right to contact Offerors to obtain additional information for use in evaluating proposal and solicitation requirements.

4. **Proposal Conference:** If a proposal conference is scheduled, Offeror shall attend the conference to seek clarification of any points of confusion or requirements at issue.

5. **Withdrawal of Proposal:** At any time before the specified proposal due date and time, an Offeror may withdraw its proposal by way of written correspondence from the Offeror or its authorized representative.

6. **Proposal Addenda:** Receipt and acceptance of a Request for Proposal Addendum shall be acknowledged by signing and returning the document either with the vendor’s proposal response or by separate envelope prior to proposal due date/time. Failure to sign and return an addendum prior to the proposal due date/time may result in the proposal being considered nonresponsive to that portion of the Request for Proposal and may result in rejection.

7. **Evaluation:** The City shall determine whether a proposal meets the specifications and requirements of this Request for Proposal, at its sole discretion, and reject any proposals not meeting the intent or requirements set forth therein. The City reserves the right to reject any and all proposals.
8. **Payment:** For a single requirement purchase, the City will make an effort to remit payment within thirty (30) calendar days from receipt and approval of acceptable products, materials and/or services and approval of correct invoice. For ongoing term Contract purchases, the City will make an effort to remit payment within thirty (30) calendar days from approval of monthly statement.
9. **Discounts:** Payment discounts periods shall be computed from the date of receipt of acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed. Discounts shall be taken on the full amount of the invoice, unless otherwise indicated. The City shall be entitled to receive any discounts offered by Offeror, if payment is made within the discount period.
10. **Compliance with City Solicitation Requirements:** Unless stated otherwise in this Request for Proposal, the City reserves the right to award by individual line item, by group of items, or as a total at the City's discretion. The City expressly reserves the right to waive any immaterial defect or informality, or reject any or all proposals, or portions thereof, or reissue this Request for Proposal.
11. **Award of Contract:** A proposal shall constitute a binding Offer to Contract with the City based on the terms, conditions and specifications contained in this Request for Proposal. An Offeror shall become a Contractor only upon execution of a formal Contract from the City Procurement Office ("Contract"). Unless this Request for Proposal includes separate contract document(s) or requires the Offeror to submit a contract for review, a contract shall be formed when the City Procurement Office provides a written notice of award or a purchase order to the successful Offeror. All items and conditions of the Contract are contained herein, unless modified by an amendment approved by the City. Proposals that take exception to the terms, conditions, specifications and/or other requirements stated within this Request for Proposal may cause the vendor's Offer to be considered non-responsive and rejected. Exceptions will be evaluated on an individual basis to determine compliance with the purpose and intent of the terms and conditions stated within this solicitation. The City shall be the sole judge as to whether an exception complies with the general purpose and intent of any term, condition and/or specification set forth herein.
12. **Taxes:** All materials, equipment and/or products shall be proposed as F.O.B. City, prepaid. Unless specified herein, sales, use or federal excise tax shall not be included in proposal pricing. The City is exempt from payment of federal excise tax. For proposal evaluation, transaction (sales) privilege tax paid (returned) to the City is considered a pass-through cost, calculated as zero (0) expense. For information on privilege (sales) tax, please contact the City's Tax and License Office at (480) 350-2955 or visit their web site at www.tempe.gov/salestax.
13. **Payment by City Procurement Card:** The City Procurement Office may elect to remit payment through the use of a City procurement card. Each Offeror may indicate on the Price Sheet of this Request for Proposal its ability to accept City procurement card payments. The inability to accept payment by City procurement card will not disqualify a proposal.
14. **Proposal Results:** Offerors may attend the scheduled proposal opening at which the name of each Offeror will be publicly read. All other information contained in the proposals shall be kept confidential until contract is awarded. After award of contract, an appointment may be made with the City Procurement Officer to review proposal documents. Formal Contract award results shall be placed on the Procurement Office web page (www.tempe.gov/procurement) and posted at the front counter of the Procurement Office at the time the Contract award is approved by the City Council. Award recommendations may also be viewed via the City Clerk's web site normally up to five (5) days prior to the scheduled City Council meeting by visiting (<http://documents.tempe.gov/sirepub/web>).

15. **Protests:** Any actual or prospective Offeror who is aggrieved in conjunction with this Request for Proposal or award may protest the award to the City Procurement Office. A protest based upon alleged improprieties in this Request for Proposal that are apparent before the proposal opening shall be filed prior to the proposal due date/time. A protest concerning an award recommendation must be filed within ten (10) business days after the date of award. Up to five (5) days before award of a contract, the City Procurement Office will post award recommendations on the City Clerks web site at (http://documents.tempe.gov/sirepub/?sort=meet_date) and at the Procurement Office front counter and website for public review (www.tempe.gov/procurement). A protest shall be in writing and include the protester's name, address and phone number, identification of the solicitation or Contract being protested, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents, and the form of relief requested. A protest is to be on the protester's company letterhead and signed by the protester or its authorized representative.
16. **Compliance of Proposal Offeror/Contractor Forms:** Any documents or forms (including separate contract, maintenance agreement or training agreement intended by the Offeror to be utilized in any resulting Contract, must be submitted with proposal. Any documents inconsistent with or taking exception to the terms, conditions, specifications and/or other requirements stated within this Request for Proposal may cause the proposal to be considered as nonresponsive and rejected. No documents will be considered unless submitted with vendor's proposal Offer and approved by the City Procurement Office.
17. **Definitions:** For purposes of this Request for Proposal and resultant Contract, the following definitions apply:
- A. "City" means the municipal corporation of the City of Tempe, Arizona.
 - B. "Code Governance" means unless otherwise specified herein, the provisions of the Tempe City Code, Chapter 26A shall apply and govern this Request for Proposal.
 - C. "Contract" means the agreement for the procurement of goods, services, work, construction or concessions.
 - D. "Contractor" means an Offeror responding to a Request for Proposal who has been awarded a Contract with the City.
 - E. "Offer" means a written offer to furnish goods, services, work, materials, construction and/or concessions to the City, in conformity with the standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.
 - F. "Offeror" means a business, entity or person who submits an Offer in response to a competitive solicitation.
 - G. "Public Record" means proposals and all other documents submitted in response to this solicitation shall become the property of the City and shall be a matter of public record available for review following the Contract award.
 - H. "Purchase Order" means a document issued by the City Procurement Office directing the Contractor to deliver goods, services, work, materials, construction and/or concessions to the City.
 - I. "Request for Proposal" means a competitive solicitation issued by the City for the procurement of goods, services, work, materials, construction and/or concessions.

18. **Responsiveness to Specifications:** Performance or feature requirements which are designated as mandatory or minimums are needed in order to satisfy an identified task or performance need. A description is given for each designated feature. This description shall be used to determine if the Offeror's proposed product(s) and/or service(s) is/are capable of performing the function(s) specified in the Request for Proposal.

It is recognized that more than one method may be used to accomplish the sought after task functionality. If Offeror has an alternate method of performing functional tasks, then Offeror shall list such method as an "alternate", and described in full detail within the Proposal. The City shall be the sole judge as to whether any alternate methodology will be accepted.

"Must", "shall", "will", "minimum", "required" and/or "mandatory" performance/feature statements must be met or exceeded by the Offeror. Should no Offeror be found totally responsive to all designated Request for Proposal requirements, the City at its option, may either award the Contract to the most responsive Offeror or cancel the Request for Proposal and issue another Request for Proposal for the need under revised specifications.

19. **Technical Questionnaire:** Offeror must complete the Technical Questionnaire portion of this Request for Proposal and provide any documentation required to support the answers to the Questionnaire. Questionnaire items, which are designated as mandatory, are needed to satisfy a required task or performance criteria. Items, which may be listed as desirable, are not required to be responsive to the Request for Proposal and will be relatively evaluated against other proposals in making a final award decision.

If supporting documentation is required, Offeror shall provide the documentation in the sequence set forth in the Request for Proposal and ensure all technical literature and/or narrative explanations fully address the specifics of the question. Vague or disorganized responses that do not allow sufficient information for evaluation purposes may result in rejection of a Proposal.

20. **Proposal Opening:** Proposals shall be opened at the time and place designated on the cover page of this Request for Proposals. The name of each Offeror and the identity of the Request for Proposal for which the proposal was submitted shall be publicly read and recorded in the presence of witnesses. Proposals, modifications and all other information received in response to this Request for Proposal shall be shown only to City personnel having a legitimate interest in its evaluation. Prices shall not be read. After Contract award, the proposals and the evaluation documentation shall be open for public inspection.

21. **Technical Proposal Opening:** Technical proposals (as received in step one of a two step bidding process) shall be opened at the time and place designated on the cover page of this document. The name of each Offeror and the identity of the Request for Proposal for which the proposal was submitted shall be publicly read and recorded in the presence of witnesses. Proposals, modifications and all other information received in response to this Request for Proposal shall be shown only to City personnel having a legitimate interest in the evaluation. Evaluation documentation to substantiate technical proposal selection(s) shall be open for public inspection.

22. **Proposal Evaluation and Award:** Award(s) shall be made to the responsible Offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration the evaluation factors set forth in the Request for Proposal. The City shall be the sole judge as to the acceptability of the products and/or services offered.

23. **Clarifications and Negotiations with Offerors and Revisions to Proposal:** Clarifications may be made with any submitting firm at any time during the evaluation phase of this procurement. Clarifications are not negotiations and may be utilized by the City to ensure thorough and complete understanding of, and responsiveness to, the solicitation requirements. Negotiations may be conducted with responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award. The purpose of negotiations is to allow the City and the Offeror(s) to revise initial Offers through an exchange or series of exchanges. Should the City elect to call for final proposal revisions (best and final Offers), Offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiations and revision of proposals, and such revisions may be permitted after submissions and prior to award. In conducting clarifications and negotiations there shall be no disclosure of any information derived from proposals submitted by competing Offerors. The purposes of such negotiations shall include but not be limited to:
- A. Determine in greater detail such Offeror's qualifications;
 - B. Explore with the Offeror the scope and nature of the project, the Offeror's proposed method of performance, and the relative utility of alternate methods of approach;
 - C. Determine that the Offeror will make available the necessary personnel and facilities to perform within the required time; and
 - D. Agree upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.
24. **Code Governance:** Unless otherwise specified herein, the provisions of the Tempe City Code, Chapter 26A shall apply and govern this Request for Proposal.
25. **Public Record:** Proposals and all other documents submitted in response to this solicitation shall become the property of the City and shall be a matter of public record available for review following the Contract award. Material portions of the recommended Offer(s) as determined by the City may be posted to the City's web site up to five (5) days prior to the City Council meeting.

STANDARD TERMS & CONDITIONS

Please note that these Standard Terms & Conditions shall be fully complied with by Offeror. Failure to comply with these requirements may result in rejection of a proposal for non-responsiveness, or cancellation or termination of any awarded Contract.

1. **Applicable Law:** This Contract shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code as adopted in the State of Arizona, except as otherwise provided in this Request for Proposal and resultant Contract, and all statutes or ordinances pertaining specifically to the City. This Contract shall be governed by State of Arizona law and suits pertaining to this Contract may only be brought in courts located in Maricopa County, Arizona.
2. **Arizona Climate Action Compliance:** Offeror shall comply with all applicable standards, laws, rules, orders and regulations issued pursuant to A.R.S. §49-101, *et seq.*, including but not limited to, Arizona Executive Orders Nos. 2006-13 and 2005-02, with regard to reducing GHG emissions, increasing energy efficiency, conserving natural resources and developing renewable energy sources.
3. **Availability of Funds for the Next Fiscal Year:** The City's obligation for performance of the Contract is contingent upon the availability of City, state and federal funds that are allocated or appropriated for payment obligations of the Contract. If funds are not allocated by the City or available for the continued use or purchase of services, work and/or materials set forth herein, the City may terminate the Contract. The City will use reasonable efforts to notify Contractor of such non-allocation affecting the obligations of the Contractor and/or City. The City shall not be penalized or adversely affected for exercise of its termination rights. Further, the City shall in no way be obligated or liable for additional payments or other damages as a result of such termination. No legal liability on the part of the City for any payment may arise for performance under this Contract.
4. **Certification:** By signing the "Vendor's Offer", form 201-B (RFP), the Offeror certifies:
 - A. The submission of the vendor's proposal Offer response did not involve collusion or other anti-competitive practices.
 - B. The City is an equal opportunity, affirmative action employer. Offeror hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, religion, color, national origin, ancestry, physical or mental disability, age, veteran status, marital status, sex, gender, sexual orientation or gender identification. Offeror agrees and covenants that it will comply in all respects with the applicable provisions of Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, Arizona Executive Order No. 99-4, and all other applicable state and federal statutes governing equal opportunity.
 - C. Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Offer. Failure to sign the "Vendor's Offer" or signing it with a false statement shall void the submitted proposal and any resulting Contract. In addition, the Offeror may be barred from future proposal and bidding participation with the City and may be subject to such further actions as permitted by law.
 - D. The Offeror agrees to promote and offer to the City only those materials and/or services as stated and allowed by this Request for Proposal and resultant Contract award. Violation of this condition shall be grounds for Contract termination by the City.

- E. The Offeror expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. § 23-211, *et seq.*, and all laws, regulations, requirements and duties relating thereto. Offeror further warrants that to the extent permitted by law, it will fully indemnify the City for any and all losses arising from or relating to any violation thereof.
- F. Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Legal Arizona Workers Act (LAWA), and all amendments thereto, along with all attendant laws, rules and regulations. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.
5. **Commencement of Work:** Contractor is cautioned not to commence any work or provide any materials or services under the Contract until and unless Contractor receives a purchase order, Notice to Proceed, or is otherwise directed in writing to do so, by the City.
6. **Confidentiality of Records:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
7. **Conflict of Interest:** This Contract is subject to the cancellation provisions of A.R.S. § 38-511.
8. **Contract Formation:** This Contract shall consist of this Request for Proposal and the vendor's proposal Offer submitted, as may be found responsive and approved by the City. In the event of a conflict in language between the documents, the provisions of the City's Request for Proposal shall govern. The City's Request for Proposal shall govern in all other matters not otherwise specified by the Contract between the parties. All previous contracts between the Offeror and the City are not applicable to this Contract or other resultant contracts. Any contracted vendor documents that conflict with the language and requirements of the City's solicitation are not acceptable and void the Contract.
9. **Contract Modifications:** This Request for Proposal and resultant Contract may only be modified by a written contract modification issued by the City Procurement Office and counter-signed by the Contractor. Contractors are not authorized to modify any portion of this solicitation or resulting Contract without the written approval of the City Procurement Office and issuance of an official modification notice.
10. **Contracts Administration:** Contractor must notify the designated Procurement Officer from the City's Procurement Office for guidance or direction of matters of Contract interpretation or problems regarding the terms, conditions or scope of this Contract. The Contract shall contain the entire agreement between the City and the Contractor and the Contract shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

11. **Cooperative Use of Contract:** Any Contract resulting from this solicitation shall be for the use of the City of Tempe. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tempe's Department of Procurement are eligible to participate in any subsequent Contract. Additionally, this Contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials/SAVE/save-members.pdf> for a listing of participating agencies. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter and/or rules and regulations of the respective political entity.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others. Contractor shall be responsible for correctly administering this Contract in accordance with all terms, conditions, requirements, and approved pricing to any eligible procurement unit.

12. **Dispute Resolution:** This Contract is subject to arbitration to the extent required by law. If arbitration is not required by law, the City and the Contractor agree to negotiate with each other in good faith to resolve any disputes arising out of the Contract. In the event of any legal action or proceeding arising out of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred with said fees and costs to be included in any judgment rendered.

13. **Energy Efficient Products:** The City may consider energy conservation factors including costs in the evaluation of equipment and product purchases for the purpose of obtaining energy efficient products. In addition, vendor proposal Offers may specify items that have been given an energy efficient classification by the federal government for consideration by the City.

14. **Billing:** All invoices submitted by Contractor for the City's review and approval shall be in itemized form to identify the specific item(s) being billed. Items must be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the City shall refer to the Contract number resulting from this Request for Proposal. Separate invoices are required on individual contracts or purchase orders. Only invoices with items resulting from this Request for Proposal will be accepted for review and approval by the City.

15. **Estimated Quantities:** This Request for Proposal references quantities as a general indication of the City's needs. The City anticipates considerable activity resulting from Contracts that will be awarded as a result of this Request for Proposal; however, the quantities shown are estimates only and the City reserves the right to increase or decrease any quantities actually acquired, in its sole discretion. No commitment of any kind is made concerning quantities and Offeror hereby acknowledges and accepts same.

16. **Events of Default and Termination:**

A. The occurrence of any or more of the following events shall constitute a material breach of and default under the Contract. The City reserves the right to terminate the whole or any part of the Contract due to Contractor's failure to fully comply with any term or condition herein.

- i) Any failure by Contractor to pay funds or furnish materials, services and/or goods that fail to conform to any requirement of this Contract or provide personnel that do not meet Contract requirements;
- ii) Any failure by Contractor to observe, perform or undertake any provision, covenant or condition of this Contract to be observed or performed by Contractor herein, including but not limited to failing to submit any report required herein;

- iii) Any failure to make progress in the performance required pursuant to the Contract and/or gives the City reason to believe that Contractor cannot or will not perform to the requirements of the Contract; or,
- iv) Any failure of Contractor to commence construction, work or services within the time specified herein, and to diligently undertake Contractor's work to completion.

B. Upon and during the continuance of an event of default, the City, at its option and in addition to any other remedies available by law or in equity, without further notice or demand of any kind to Contractor, may do the following:

- i) Terminate the Contract;
- ii) Pursue and/or reserve any and all rights for claims to damages for breach or default of the Contract; and/or,
- iii) Recover any and all monies due from Contractor, including but not limited to, the detriment proximately caused by Contractor's failure to perform its obligations under the Contract, or which in the ordinary course would likely result there from, including, any and all costs and expenses incurred by the City in: (a) maintaining, repairing, altering and/or preserving the premises (if any) of the Project; (b) costs incurred in selecting and retaining substitute Contractor for the purchase of services, materials and/or work from another source; and/or (c) attorneys' fees and costs in pursuing any remedies under the Contract and/or arising there from.

C. The exercise of any one of the City's remedies as set forth herein shall not preclude subsequent or concurrent exercise of further or additional remedies. In addition, the City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance, breach or convenience, or pursuant to A.R.S. § 38-511, or abandon any portion of the project for which services have not been fully and/or properly performed by the Contractor.

D. Termination shall be commenced by delivery of written notice to Contractor by the City personally or by certified mail, return receipt requested. Upon notice of termination, Contractor shall immediately stop all work, services and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease work pursuant to the Contract. Contractor shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that Contractor could reasonably have avoided.

E. The City, in its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.

17. **Termination for Convenience:** The City at its sole discretion may terminate this Contract for convenience with thirty (30) days advance notice to Contractor. Contractor shall be reimbursed for all appropriate costs as provided for within the Contract up to the termination date specified.

18. **Force Majeure:**

- A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under the Contract only in the event that and to the extent that such party's performance of the Contract is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- B. Force majeure shall not include the following occurrences:
- i) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
 - ii) Late performance by a subcontractor.
- C. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours of the commencement thereof and shall specify the causes of such delay in the notice. Such notice shall be hand delivered or sent via certified mail and shall make a specific reference to this clause, 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 by hand delivery or certified mail 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 the results or effects of such delay prevent the delayed party from performing in accordance with the Contract.

19. **Gratuities:** The City may elect to terminate any resultant Contract, if it is found that gratuities in any form were offered or given by the Contractor or agent thereof, to any employee of the City or member of a City evaluation committee with a view toward securing an order, securing favorable treatment with respect to awarding, amending or making of any determinations with respect to performing such order. In event the Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from Contractor the amount of gratuity.

20. **Indemnification:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Contractor may be legally liable in the performance of this Contract. Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting from, caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Contract by Contractor or any employee of the Contractor or any other person (not the City) for whose acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. This provision shall survive the term of this Contract.

21. **Interpretation of Parole Evidence:** This Contract is intended as a final expression of the agreement between the parties and as a complete and exclusive statement of the Contract, unless the signing of a subsequent Contract is specifically called for in this Request for Proposal. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of the Contract, even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

Contractor shall respond within five (5) calendar days after notice by the City of any defects and/or maintenance requests to immediately remedy the condition of the job site. Should the Contractor fail to respond promptly as set forth herein, the City shall correct the job site at the expense of the Contractor, and recover all attendant costs.

22. **Key Personnel:** Contractor shall provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract during the Contract term and any renewal periods. The Contractor must agree to assign specific individuals to the key positions.

A. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without prior written notice to the City.

B. If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall replace each person with personnel of substantially equal ability and qualifications upon prior City approval.

23. **Licenses and Permits:** Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor, at its sole expense.

24. **No Assignment:** No right or interest in this Contract shall be assigned by Contractor and no delegation of any duty of Contractor shall be made without prior written permission of the City.

25. **Notices:** All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provision collectively called "Notices"), shall be in writing and shall be hand delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:

City of Tempe Procurement Office
Attn: Procurement Officer
20 E. 6th Street (Second Floor)
PO Box 5002
Tempe, Arizona 85280

[Contractor's Name]
[Attn of Offeror Named in Contract]
[Address]

Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder.

26. **No Waiver:** No breach of default hereunder shall be deemed to have been waived by the City, except by written instrument to that effect signed by an authorized agent of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after demand by the City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City. Acceptance by the City for any materials shall not bind the City to accept remaining materials, future shipments or deprive the City of the right to return materials already accepted. Acceptance by the City of delinquent or late delivery shall not constitute a waiver of a later claim for damages and/or bind the City for future or subsequent deliveries.
27. **Overcharges by Antitrust Violations:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the City. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as the goods and/or services used fulfill the Contract.
28. **Performance Standards:** Equipment shall operate in accordance with the performance criteria specified in the Request for Proposal, including the manufacturer's published specifications applicable to the machine involved. Each machine is expected to be available for productive use, as provided in the procurement documents. Penalties and/or bonuses applicable to machine and system performance, if any, shall be calculated as specified in the Request for Proposal.
29. **Preparation of Specifications by Persons Other Than City Personnel:** No person preparing specifications for this Request for Proposal shall receive any direct or indirect benefit from the use of these specifications.
30. **Procurement of Recycled Materials:** If the price of recycled material that conforms to specifications is within five percent (5%) of the lower priced material that is not recycled and the recycled Offeror is otherwise the lowest responsive and responsible Offeror, the proposal containing recycled material shall be considered more advantageous; provided the item(s) to be obtained contains at least the minimum amount of recycled content material as defined in the City's solicitation and sufficient funds have been budgeted for the purchase.
31. **Provisions By Law:** Each and every provision of law and any clause required by law to be in this Contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract will forthwith be physically amended to make such insertion or correction.
32. **Public Record:** After award of Contract, proposal responses shall be considered public record and open for public inspection except to the extent the withholding of information is permitted or required by law. If an Offeror believes a specific section of its proposal response is confidential, the Offeror shall mark the page(s) confidential and isolate the pages marked confidential in a specific and clearly labeled section of its proposal response. The Offeror shall include a written statement as to the basis for considering the marked pages confidential and the City Procurement Office will review the material and make a determination, pursuant to A.R.S. §§ 39-121, *et seq.*, and 41-1330, *et seq.* A general statement of confidentiality (boiler plate statement) that is not appropriately referenced to a specific section of the RFP will not be sufficient to warrant protection by the City. The confidential portion of the submission must be clearly noted with accompanying justification for treating the section confidential. Failure of the vendor to appropriately designate confidential information in this manner will relieve the City of any obligation to protect this information as confidential.
33. **Records:** Pursuant to provisions of Title 35, Chapter 1, Article 6 Arizona Revised Statutes §§ 35-214 and 36-215, Contractor shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files and other records relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced at the offices of the City Attorney or City Procurement Office.

34. **Relationship of Parties:** It is clearly understood that each party to this Contract will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other party. The Contractor is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to the Offeror. An employee or agent of one party shall not be an employee or agent of the other party for any purpose whatsoever.
35. **Rights and Remedies:** No provisions of this Request for Proposal or in the proposal shall be construed, expressly or by implication, as a waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of the City to insist upon strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, shall not release the Contractor from any responsibilities or obligations imposed by the Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.
36. **Safety Standards:** All items supplied on this Contract must comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.
37. **Serial Numbers:** Proposals shall include equipment on which the original manufacturer's serial number has not been altered in any way. The City reserves the right to reject any and all equipment.
38. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.
39. **Specially Designated Nationals and Blocked Persons List:** Contractor represents and warrants to the City that neither Contractor nor any affiliate or representative of Contractor:
- A. Is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed. Reg. 49079 (“Order”);
 - B. Is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s);
 - C. Is engaged in activities prohibited in the Order; or,
 - D. Has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.
40. **Time of the Essence:** Time is and shall be of the essence in this Contract. If the delivery date(s) specified herein cannot be met, Contractor shall notify the City using an acknowledgment of receipt of order and intent to perform without delay, for instruction. The City reserves the right to terminate this Contract and to hold Contractor liable for any cost of cover, excess cost(s) or damage(s) incurred as a result of delay.

41. **Unauthorized Firearms & Explosives:** No person conducting business on City property is to carry a firearm or explosive of any type. All Offerors, Contractors and subcontractors shall honor this requirement at all times and failure to honor this requirement shall result in Contract termination and additional penalties. This requirement also applies to any and all persons, including those who maintain a concealed weapon's permit. In addition to Contract termination, anyone carrying a firearm or explosive device will be subject to further legal action.
42. **Warranties:** Contractor expressly warrants that all materials and/or goods delivered under the Contract shall conform to the specifications of this Contract, and be merchantable and free from defects in material and workmanship, and of the quality, size and dimensions specified herein. This express warranty shall not be waived by way of acceptance or payment by the City, or otherwise. Contractor expressly warrants the following:
- A. All workmanship shall be finest and first-class;
 - B. All materials and goods utilized shall be new and of the highest suitable grade for its purpose; and,
 - C. All services will be performed in a good and workmanlike manner. Contractor's warranties shall survive inspection, acceptance and/or payment by the City, and shall run to the City, its successors, agents and assigns.

The Contractor agrees to make good by replacement and/or repair, at its sole expense and at no cost to the City, any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after acceptance by the City, unless otherwise specified herein. Should Contractor fail to perform said replacement and/or repair to City's satisfaction within a reasonable period of time, City may correct or replace said defective or nonconforming materials and recover the costs thereof from Contractor. This warranty shall not operate to reduce the statute of limitations period for breach of contract actions or otherwise, or reduce or eliminate any legal or equitable remedies.

43. **Work for Hire and Ownership of Deliverables:** Contractor hereby agrees and covenants that all the results and proceeds of Contractor's work and/or services for the Project specified herein, for Contractor and all of its agents, employees, officers and subcontractors, shall be owned by the City, including the copyright thereto, as work for hire. In the event, for any reason such results and proceeds are not deemed work for hire, Contractor agrees and covenants that it shall be deemed to have assigned to the City all of its right, title and interests in such results, proceeds and content to the City, without limitation. Contractor agrees to indemnify and hold the City harmless from and against all claims, liability, losses, damages and expenses, including without limitation, legal fees and costs, arising from or due to any actual or claimed trademark, patent or copyright infringement and any litigation based thereon, with respect to any work, services and/or materials contemplated in this Contract. Contractor agrees to pay to defend any and all such actions brought against the City. Contractor's obligations hereunder shall survive acceptance by the City of all covenants herein as well as the term of the Contract itself.
44. **Non-exclusive Contract:** Any Contract resulting from this Request for Proposal shall be awarded with the understanding and agreement that it is non-exclusive and entered into for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source to secure cost savings or if timely delivery may be met by the Contractor
45. **Ordering Process:** Upon award of a Contract by the City Procurement Office, the City may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate Contractor. Each purchase order must cite the correct Contract number. Such purchase order is required for the City to order and the Contractor to deliver the material and/or service.

46. **Shipping Terms:** Prices shall be F.O.B. Destination to the delivery location(s) designated herein. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. The City will notify the Contractor promptly of any damaged materials and shall assist the Contractor in arranging for inspection. Shipments under reservation are prohibited. No tender of a bill of lading shall operate as a tender of the materials.
47. **Delegated Awards:** In the event this Contract is administratively awarded via delegated authority as provided for in Section 26A-5 of the Procurement Ordinance, the Contractor acknowledges that a final Contract with the City of Tempe requires City Council approval and possibly the signature of the Mayor. Should this Contract be rejected by the City Council, Contractor agrees that it is immediately void and unenforceable against any party. The awarded firm(s) will be compensated only for any and all costs incurred up to the date of notification of such termination.

Special Terms and Conditions

Proposals taking exception to Special Terms & Conditions stated within this Request for Proposal may cause the Proposal to be considered nonresponsive and rejected.

1. **City Procurement Document:** This Request for Proposal is issued by the City. No alteration of any portion of this Request for Proposal by an Offeror is permitted and any attempt to do so shall result in vendor's proposal Offer being considered nonresponsive, and rejected. No alteration of any portion of a resultant Contract is permitted without the written approval of the City Procurement Office and any attempt to do so shall be considered a breach of the Contract. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, Contract termination and/or suspension of the Contractor.
2. **Offer Acceptance Period:** To allow for an adequate evaluation, the City requires the vendor's proposal Offer in response to this Request for Proposal to be valid and irrevocable for ninety (90) days after the proposal due time and date.
3. **Term of Contract:** The term of the Contract shall commence on the date of award and shall continue for a period of two years thereafter, unless terminated, canceled or extended as otherwise provided herein.
4. **Contract Renewal:** The City reserves the right to unilaterally extend the period of any resultant Contract for ninety (90) days beyond the stated term. In addition, the City at its option may renew for supplemental terms of up to a maximum of five (5) additional years. The period for any single renewal increment shall be determined by the City Procurement Office. Such increment shall not be for more than a period of one (1) year each, unless the City is eligible to obtain a significant cost and/or supply advantage by a longer Contract renewal period.
5. **Price Adjustment:**
 - A. The Procurement Office will review fully documented requests for price increases after the Contract has been in effect for two (2) years. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the Proposal and can be shown to directly affect the price of the item concerned. The City Procurement Office will determine whether the requested price increase, or an alternative option, is in the best interest of the City. Advanced thirty (30) day written notification by Contractor is required for any price changes. All price adjustments will be effective on the first day of the month following approval or acceptance by the City Procurement Office. After the City approves a price increase the Contractor shall not be eligible to receive an additional increase until twenty four (24) months from the date of the last approved price increase.
 - B. Price increase requests must be acknowledged in writing by the City Procurement Office before becoming effective. If not acknowledged within thirty (30) days, Contractor shall contact the City Procurement Office to assure the price increase request was received.
 - C. The Contractor shall offer any published price reduction or if applicable to Contract, profit sharing price advantage to the City concurrent with its announcement to other customers. A price reduction or profit sharing price advantage may be offered at any time during the terms of an awarded Contract and shall become effective upon notice and acceptance. The City shall likewise take advantage of any special sales discounts offered to the general public, which exceed contracted price discounts extended to the City by the Contractor.
6. **Insurance:**
 - A. **Insurance Required:** Prior to commencing services under this Contract, Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, subcontractors, or sub-subcontractors.

For Offerors with self-insurance, proof of self-insurance with minimum limits expressed below must be submitted on proper forms for evaluation prior to award of Contract.

A Contract Award Notice or Purchase Order will not be issued to a Vendor until receipt of all required insurance documents by the City Procurement Office with such documents meeting all requirements herein. In addition, before any Contract renewal, all required insurance must be in force and on file with the City Procurement Office. Contractor must submit required insurance within ten (10) calendar days after request by the City Procurement Office or the award may be rescinded and another Vendor selected for award.

B. Minimum Limits of Coverage: Without limiting any obligations or liabilities, the Contractor, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

i. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

a. Commercial General Liability

Commercial general liability insurance limit of not less than \$1,000,000 for each occurrence, with a \$2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Contract or the general aggregate shall be twice the required per occurrence limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as insurance service officer policy form CG2010 11/85 edition or any replacement thereof.

In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance.

Such policy shall contain a "severability of interests" provision.

b. Worker's Compensation

The Contractor shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

In case services are subcontracted, the Contractor will require the subcontractor to provide worker's compensation and employer's liability to at least the same extent as provided by Contractor.

c. Automobile Liability

Commercial business automobile liability insurance with a combined single life or bodily injury and property damages of not less than \$1,000,000 per accident regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor services. Coverage will be at least as broad as coverage Code 1 "any auto". Insurance Service Office policy form CA0001 Y87 or any replacements thereof. Such coverage shall include coverage for loading and unloading hazards.

- C. Additional Insured. The insurance coverage, except for workers compensation and professional liability coverage, required by this Contract, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the Contractor shall be primary insurance. This provision and the naming of the city as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).
 - D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted by the City. Failure to do so shall constitute a material breach of this Contract.
 - E. Primary Coverage. Contractor's insurance shall be primary insurance to the City, and any insurance or self insurance maintained by the City shall not contribute to it.
 - F. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
 - G. Waiver. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of the Contractor.
 - H. Deductible/Retention. The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self insured retentions shall be disclosed by the contractor and shall not be applicable with respect to the coverage provided to the City under such policies. Contractor shall be solely responsible for deductible and/or self-insurance retention and the City, at its option, may require Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
 - I. Certificates of Insurance. Prior to commencing work or services under this Contract, Contractor shall furnish the City with certificates of insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to: Contract Administrator, City of Tempe, P. O. Box 5002, Tempe, AZ 85280.
 - J. Copies of Policies. The City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.
7. **Professional Liability:** The Contractor shall maintain professional liability insurance covering errors and omissions arising out of the services performed by the Contractor and/or any person(s) employed by it, with an unimpaired limit of not less than \$1,000,000 each claim and \$1,000,000 all claims. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of services as evidenced by annual certificates of insurance provided by Contractor to the City. In addition, Contractor shall maintain property coverage on an all-risk, replacement cost basis in an amount established by the City with valuable papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of the Contractor used in the completion of this Contract.

Scope of Work
Development of Infrastructure
Improvement Plan, Impact Fee Schedule and Associated Documents

Purpose

The purpose of this Request for Proposal (“RFP”) to engage the services of a qualified firm for the development of an infrastructure improvement plan (IIP) and associated impact fee schedules. The awarded firm will develop the infrastructure improvement plan in compliance with Arizona’s statutes regarding impact fees and to prepare and write a development impact fee report based on the IIP for the City. For the state statutes, see Arizona Revised Statutes, Title 9, Article 6.2 “Municipal Subdivision Regulations,” 463.05 - Development fees; imposition by cities and towns; infrastructure improvements plan; annual report; advisory committee; limitation on actions; definitions (L11, Ch. 243, sec. 1. Eff. 1/1/12).

As part of this scope, Consultant will review all potential development fees that Tempe can lawfully assess and/or collect that will include the following functional areas:

- Libraries
- Street facilities;
- Fire protection
- Police
- Parks

Additionally, Consultant shall review all Tempe City Code sections including underground utility lines and art in private development.

The City has contracted separately for the development of an IIP and impact fees covering water and wastewater systems. The selected Consultant will be responsible for completing the following tasks:

Task 1: Recommend Land Use Assumptions

The selected Consultant will review, analyze and, if appropriate, update annual projections of population, employment, housing, commercial, industrial and other nonresidential square footage data for at least five years, pursuant to Arizona Revised Statutes 9-463.05. This will be based on discussions with City staff and review of published information, including that from the regional planning organization -the Maricopa Association of Governments (www.azmag.gov). The selected Consultant will prepare a memorandum discussing the recommended land use projections that will serve as the basis for the IIP and development impact fee schedule. This task will serve to establish forecasts reflecting population, housing, employment, nonresidential building area and other relevant data. Tempe is unique in that the City’s border is surrounded by neighboring communities.

Task 2: Ascertain Demand Factors and Level of Service for Relevant Public Facilities

- a. ***Ascertain Demand Factors*** – The actual demand factors that generate the need for new capital facilities related to growth, and based on the zoning for the identified areas of the City, will be reviewed.
- b. ***Evaluate Existing Levels of Service*** – Development fees should use existing levels of service for the purpose of calculating the new demand, unless there are extenuating circumstances and/or a financial plan to provide a higher level of service to existing development. The selected Consultant will determine the existing level of service by conducting onsite interviews, evaluating the appropriate studies and analyzing relevant local data that will include ASU’s proposed stadium district and other relevant developments that could impact Tempe residents.

- c. **Determine Geographic Service Area** – The appropriate geographic service area for purposes of calculating the development fees will be determined. Based on the City’s understanding of the new legislation, it is anticipated that there will be multiple zones with differing impact fees, including one or more areas where infill development could occur that result in increased demand for services.

The above subtasks (a through c) will enable the selected Consultant to ensure that three (3) important development fee requirements are met, collectively referred to as rational nexus requirements: 1) demonstration of impact, 2) benefit, and 3) proportionality.

Consultant shall cooperate with the City’s consultant – already selected, for information and analysis relating to water and wastewater.

Task 3: Determine Appropriate Allocation Methodology to Comply with New State Statute Requirements

The selected Consultant will determine the most appropriate allocation methodology or methodologies for each public facility fee category so the resulting fee is in compliance with new state statute requirements.

Task 4: Identify Capacity Needs and Costs

This task will culminate in development of an infrastructure improvements plan based on the relevant capital needs and costs due to growth.

- a. **Long Range Capital Need** - In this subtask, the selected Consultant will assist the City in developing an IIP in compliance with the requirements of state statutes. This subtask may include reviewing various studies and other relevant data. The discussions will include establishing reasonable costs based on the size and scope of identified projects and whether these capital facilities needs are due to normal replacement, catch-up or new demand tied to growth.
- b. **Review Cost Estimates** - In this subtask the selected Consultant will review, as relevant, the various capital costs. As part of this subtask, the City will ascertain whether the facilities are likely to be financed and, if so, the amortization schedule.

As part of calculating the fee, the Consultant will ensure only eligible capital costs are included per the requirements of state statutes. The Consultant also will ensure that relevant tax revenues are incorporated into the calculation of the impact fee in accordance with Arizona statutes. Further, consultant will review the Tempe City Code to recommend appropriate Code text amendments, as needed.

Task 5: Determine Need for and Calculate “Credits” to be Applied Against Capital Costs

A consideration of “credits” is integral to the development of a legally valid development fee methodology.

There are two (2) types of “credits” each with specific and distinct characteristics, but both of which will be addressed in the development of fees. The first is a credit due to possible double payment situations. This could occur when future contributions are made by the property owner toward the capital costs of the public facility covered by the development fee. The second is a credit toward the payment of a development fee for the required dedication of public sites and improvements provided by the developer and for which the development fee is imposed.

The City will disclose to the Consultant any known credits that exist.

Task 6: Prepare Infrastructure Improvement Plan (IIP)

In this task the selected Consultant will prepare an IIP that reflects the costs of infrastructure, improvements, real property, financing, other capital and associated appurtenances, equipment, vehicles, furnishings, and other eligible items that are associated with meeting future needs necessary for public services as allowed per state statutes. This IIP will meet requirements of A.R.S. 9-463.05.

Task 7: Complete Development Fee Methodology and Calculations

The completion of the above task will enable the development fee methodology and calculations to be finalized. The maximum justifiable fee that can be charged and conform to state statutes will be calculated. Tempe's current impact fees are based on one hundred percent (100%) of the calculated fee.

Task 8: Preparation of IIP and Development Fee Report

The selected Consultant will prepare a draft report that summarizes the need for development fees for the appropriate public facility fee category, the relevant methodology employed and document all assumptions and cost factors. The report will include, at a minimum, the following information:

- a. Executive summary
- b. A detailed description of the methodologies used in the study
- c. A detailed description of all level of service standards, cost factors and accompanying rationale
- d. An IIP spanning a minimum five (5) year planning horizon listing projects, costs, timing, and financing
- e. A detailed schedule of all proposed fees listed by land use type and activity
- f. Other information that adequately explains and justifies the resulting recommended fee schedule

The selected Consultant's report will have flow diagrams clearly indicating the methodology and approach, a series of tables for each activity showing all of the data assumptions and figures, and a narrative explaining all of the data assumptions, sources and the methodologies. The report will be a stand-alone document clearly understood by interested parties.

Following the City's review of the draft report, the selected Consultant will incorporate mutually agreed upon changes and issue final copies in a time frame agreed upon between the City and the awarded Consultant.

Task 9: Presentations/Public Meetings/Communications

Due to the difficulty in knowing the specific number of public meetings that the Consultant will be required to facilitate as part of this project, the City will ask for a per meeting fee that can be scaled to fit the actual needs of the City. The following is an estimate of the type and number of public meetings that might be required as part of this project.

The selected Consultant will attend up to three (3) meetings between the City and the stakeholder community (homebuilders, commercial builders, etc). The purpose of these meetings is to allow interested parties, designated by the City, to understand assumptions and raise any questions about the technical demographic, cost, revenue, credit and other data and supporting documentation that is being used in the calculation of development fees. This will not be a forum to discuss the political and/or philosophical use of fees. Rather, it will be an opportunity for the interested parties to understand the soundness and the reasonableness of the technical development fee methodology. The City anticipate two (2) meetings with this group, but the number of meetings may increase to three (3) if needed. The first meeting would be to discuss the initial data assumptions, after "sign-off" by the client. The second meeting would be to discuss the draft report.

Further, the selected Consultant is required to attend and participate in up to two (2) City Council Strategy Sessions, Committee Meetings or Issue Review Sessions where City staff will present the report and its findings. The selected Consultant is not required to attend the evening City Council meeting where the governing body takes formal action regarding the proposed fees.

In addition, the selected Consultant will conduct on-site interviews with relevant staff at the beginning (and as needed throughout the process) to gather data and obtain a detailed understanding of capital needs as well as coordinate with the

City's IIP consultant for water and wastewater. The Consultant also agrees to periodically communicate with staff on related issues.

Finally, it is possible that an advisory committee could be established and if the City chooses that route (rather than the biennial audit), there could be up to three (3) meetings of the committee that the Consultant would be required to attend. However, if the biennial audit option is selected, Consultant agrees to cooperate with audit staff.

Conflicts of Interest

The awarded firm shall not be permitted to be affiliated directly or indirectly in any manner with any investment fund providers, financial institutions, or other consultants that might present a conflict of interest in connection with services provided through this agreement.

Tentative Timeline

The following schedule outline shall be completed by the Consultant to show dates for completion of the Tasks shown. The City anticipates awarding this contract at the September 26, 2013 Council meeting. The Consultant's scope of work shall be completed by February 28, 2014.

<u>Completion Date</u>	<u>Event</u>
September 26, 2013	Award for IIP Consultant Presented to Council
	Develop Land Use Assumptions
	Ascertain Demand Factors and Levels of Service for Necessary Public Services
	Evaluate Different Allocation Methodologies
	Identify Capital Needs and Costs
	Determine Need for Credits
	Prepare Infrastructure Improvement Plan (IIP)
	Complete Development Fee Methodology and Calculations
	Preparation of IIP and Development Fee Report
	Conduct Meetings with City Council, Committees, Stakeholders, etc.
February 2014	Scope of Work Completed and Submission of Report to Council

Existing City Planning and Resource Documents

The following resource documents can be viewed by visiting the Tempe Community Development Department web site – link provided: <http://www.tempe.gov/index.aspx?page=908>

Draft of General Plan 2040	Open Space Plan – Executive Summary
Subdivision Ordinance	Open Space – Full Study
Historic Preservation Ordinance	Apache Boulevard Redevelopment Plan
Nuisances and Property Enhancement Ordinance	Zoning and Development Code
Design and Placemaking Guidelines	Community Design Principles
Mill & Lake District Streetscape Principles & Guidelines	
3 Decades of Development	
Downtown Community Design Principles	

The following resource documents can be viewed by visiting the Tempe Community Development Department web site, clicking on the link provided or downloading from Tempe Procurement web site as noted below:

Maps http://www.tempe.gov/index.aspx?page=905	Comprehensive Transportation Plan PDF downloadable from Procurement Web site: http://www.tempe.gov/bids/
General Plan 2030 http://www.tempe.gov/index.aspx?page=900	ITS Strategic Plan PDF downloadable from Procurement Web site: http://www.tempe.gov/bids/
Parks and Recreation Master Plan http://www.tempe.gov/index.aspx?page=576	

The following resource documents can be viewed by visiting the Tempe Fire Department web site – link provided: <http://www1.tempe.gov/fire/>

2013/2014 Operational Guide	2013/2014 Strategic Plan
2012 Annual Report	

The following resource documents can be viewed by visiting the Tempe Police Department web site – link provided: <http://www.tempe.gov/index.aspx?page=231>

2012-2014 Strategic Plan	
2012 Annual Report	

Required Information

Offerors shall include one (1) original and seven (7) copies of the complete proposal including one (1) electronic copy of the entire proposal (CD or flash drive). Submitting firms are cautioned to carefully review the following required information components and ensure that all areas are responded to and organized in the same sequence as presented below. Failure to provide required information may cause the proposal to be downgraded or rejected for non-responsiveness. There is no page limit on the submitted proposals; firms are encouraged to be as succinct as possible.

1. Introduction/Background – Provide background information on the firm to include legal name, organization structure (sole proprietor, corporation, etc.) location of offices, years in business under current name, number of years providing similar infrastructure improvement consulting services, total number of employees, identification of contact person and contact information for coordination of this submittal and statement that the offer will be help open for 90 days from date of submittal.

2. Signed Offer Form – Complete and sign the Vendor’s Offer Form (Form 201-B) by an authorized representative of the submitting company. Failure of the firm to submit this completed and properly signed form will result in the rejection of offer.

3. Experience of Firm – Provide a detailed description of the firm’s experience that demonstrates its capability to successfully provide the scope of services described in the Scope of Work section. Include brief overview on the total number of similar Infrastructure Improvement Plans (IIP) completed over the past five (5) years under the submitting firm’s name. Also, provide a brief on the number of completed IIP plans for Arizona entities over the past five (5) years. Describe the firm’s analytic capabilities and resources that would be available to the City. Include with this section a minimum of three references within the past five (5) years where the firm has successfully completed Infrastructure Improvement Plans and associated impact fee schedules. Reference information shall include account name, contact person, phone number and description of services provided.

4. Sample Report – Firm shall include a completed sample report where similar IIP services were completed (within the past 3 years) that will serve as a representation of the quality of work performed for clients.

5. Consultant Team – Describe the specific consulting team that will be assigned the City. Include background information on each consultant to include qualifications, education, applicable certifications, and general experience performing similar services. Include a description of the specific role each team member will have on this project.

6. Method of Approach – Describe how the firm will accomplish the scope of work identified herein. Firm shall specifically address each of the Scope of Work tasks (1 through 9) that demonstrate an understanding of the requirement and a brief overview of how the task will be accomplished. Include with this section a clear statement of understanding that the firm will meet all requirements of the Scope of Work section.

7. Project Timeline – The City anticipates that an award will be presented to City Council at the September 26, 2013 meeting. The City prefers to have the project completed by the end of February 2014. Offerors shall include a timeline that shows the dates of completion for each of the nine (9) tasks shown in the Scope of Work section.

8. Consultant’s Expectations – Firm shall identify any expectations/resources/requirements it has of the City in order to ensure a successful project.

9. Conflicts of Interest Disclosures – Disclose any professional or personal financial interest, which could be considered a conflict of interest in representing the City. Also, fully disclose any arrangements to derive additional compensation (beyond the fees charged the City) as the result of an award made by the City.

10. Investigations/Court Decisions - Disclose any investigations or court decisions involving the submitting firm conducted in the past five years that would be relevant to this contract.

11. Fees – Firms shall include fees based on a per Task basis (Tasks 1 through 8) to include a not to exceed lump sum total. A separate per meeting cost shall be identified for preparation and attendance of meetings as described in Task 9. The City has estimated the types and quantities of meetings, however, without knowing the specifics of the actual number of meetings it seems more prudent to receive a per meeting cost that can then be used to more accurately pay Consultant for work related to this task. Additionally, hourly rates shall be identified for the various professional services categories that can be utilized for periodically updating the IIP plan and impact fee schedules.

12. Compliance with Terms and Conditions – Firms shall indicate if they agree with all terms and conditions contained in the RFP. Include in this section any separate contract that might be required by the Consultant.

13. Value Added – Identify any additional value/benefits that would be obtained by the City through an award to the submitting firm.

Proposal Checklist for Submittals

- _____ One signed and complete original of the proposal response, including "Vendor's Proposal Offer" (Form 201-B).
- _____ Seven (7) copies of your submittal to include one (1) complete e-copy on a CD or flash drive
- _____ Required Information has been included as detailed on Page 26 and page 27. Please ensure that all categories are fully responded to.
- _____ Fee information completed and included
- _____ Any addendum(s) have been included
- _____ Sample report of previously completed project included

Evaluation Criteria

Member of the evaluation committee will score the proposals in accordance with the evaluation criteria stated below:

Award Criteria	Weight	X	Rating	=	Points
1. Fees – The fees charged for completing the scope of work along with the hourly rate fees provided for follow up services;	40	X	_____	=	_____
2. Method of Approach – The quality and thoroughness of the Method of Approach offered that demonstrates the firm’s understanding of the work required to include completion timeline;	25	X	_____	=	_____
3. Experience and Qualifications– The overall experience and qualifications of the firm and consultants in demonstrating a level of competence in successfully completing similar IIP plans and impact fee schedules to include quality of sample report provided as well as reference reviews;	30	X	_____	=	_____
4. Responsiveness – The ability of firm to provide all of the required information and the overall quality and thoroughness of the proposal;	5	X	_____	=	_____
			Total	=	_____

This proposal will be evaluated on a cumulative point system using the rating scale shown below (fractional points may be selected within this range).

Scoring

Outstanding	. . .	10 9
Good	. . .	8 7 6
Average	. . .	5 4 3
Poor	. . .	2 1
Not Addressed or Unacceptable		0

To evaluate the cost portion of the above criteria, the City may elect to evaluate each firm on a percentage basis of the lowest cost Offer. The formula would be: (Lowest Priced Offer/Evaluated Firm’s Price) X Points Possible = Evaluation Points.

Pricing Section

“Return this Section with your Response”

ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	EXTENDED PRICE
	Firms shall price the following Tasks in accordance with the scope of work requirements:			
1.	Task 1 – Recommend Land Use Assumptions	1	Job	\$ <u>8,420.00</u>
	Estimated Hours: <u>48</u>			
2.	Task 2 – Ascertain Demand Factors and Level of Service for Relevant Public Facilities	1	Job	\$ <u>12,760.00</u>
	Estimated Hours: <u>72</u>			
3.	Task 3 – Determine Appropriate Allocation Methodology to Comply with New State Statute Requirements	1	Job	\$ <u>8,800.00</u>
	Estimated Hours: <u>48</u>			
4.	Task 4 – Identify Capacity Needs and Costs	1	Job	\$ <u>17,960.00</u>
	Estimated Hours: <u>100</u>			
5.	Task 5 – Determine Need for and Calculate Credits to be Applied Against Capital Costs	1	Job	\$ <u>4,200.00</u>
	Estimated Hours: <u>24</u>			
6.	Task 6 – Prepare Infrastructure Improvement Plan(s) (IIP)	1	Job	\$ <u>19,280.00</u>
	Estimated Hours: <u>108</u>			
7.	Task 7 – Complete Development Fee Methodology and Calculations	1	Job	\$ <u>15,800.00</u>
	Estimated Hours: <u>88</u>			
8.	Task 8 – Preparation of IIP and Development Fee Report	1	Job	\$ <u>27,680.00</u>
	Estimated Hours: <u>148</u>			
9.	Task 9 – Presentations/Meetings – Indicate the cost for a <u>single meeting</u> that will include all costs for preparation, travel and leading/facilitating meeting.	1	Meeting	\$ <u>1,900.00</u>
	Estimated Hours: <u>TBD</u>			
10.	Total Lump Sum (Not To Exceed) Fee (Tasks 1 through 9)	1	Combined Job	\$ <u>116,800.00</u>

Pricing Section

“Return this Section with your Response”

ITEM NO.	DESCRIPTION OF REQUIRED MATERIAL, SERVICE OR CONSTRUCTION	QTY	UNIT	EXTENDED PRICE
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Describe any pricing assumptions that would impact the fees shown above.

As a fixed fee contract, there are no pricing assumptions that would impact the fees shown above unless the City elects to substantially modify the Scope of Work.

Follow up Services. The City may utilize the successful firm to perform related follow up services to the completed IIP plan. Please outline the positions and associated hourly rates that would apply to any and all services required to update the completed plan or perform related services:

Carson Bise \$200

Dwayne Guthrie \$180

Stephanie Ball \$165

Julie Herlands \$180

Meredith Hill \$165

* Applicable Tax 0 %

* State correct jurisdiction to receive sales tax on the Vendor's Offer, Form 201-B (RFP) included in this Request for Proposal.

Less prompt payments discount terms of ___ % ___ days/ or net thirty (30) days. (To apply after receipt and acceptance of an itemized monthly statement.) For evaluation purposes, the City cannot utilize pricing discounts based upon payments being made in less than thirty (30) days from receipt of statement.

Ordering and Invoice Instructions

Discount offering will be based upon days from receipt of the consolidated monthly statement. Invoice(s) shall not show previous balances.

Invoices shall include:

Pricing Section

“Return this Section with your Response”

1. Listing Of All Delivery/Pickup Receipt Numbers Being Invoiced.
2. Total Cost Per Item.
3. Applicable Tax.
4. Payment Terms.
5. Blanket Purchase Order Number.

Invoices that do not follow the above minimum invoicing requirements will not be paid. Payment must be applied to only invoices referenced on check/payment stub. The City reserves the right to bill contracted vendor for researching invoices that have been paid, but not properly applied by vendor account receivables office.

Statement mailing address:

City of Tempe
Accounting (see below for your contact)
P.O. Box 5002
Tempe, Arizona 85280
Phone: 480-350-8355

Accounting Contacts:

Alex Chin
Ramona Zapien
Candace Duke

Letters A – H and Numbers
Letters I – Z
General AP Inquiries and AP Checks