



**AUGUST 20, 2013**

**REQUEST FOR STATEMENT OF QUALIFICATIONS**

**FOR**

**ON-CALL ARCHITECTURAL SERVICES**

**SOLICITATION NUMBER: 14SQ002**

**Staff Contact:**

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**(480) 312-7985**

**STATEMENT OF QUALIFICATIONS IS DUE:**  
**Tuesday, September 10, 2013, by 3:00 p.m. local time**

# REQUEST FOR STATEMENT OF QUALIFICATIONS

## ON-CALL ARCHITECTURAL SERVICES

### **SECTION I - PROJECT DESCRIPTION**

The City of Scottsdale is requesting statements of qualifications from qualified architectural firms for professional services to provide architecture and related services on an “as needed” basis at various project locations throughout the City of Scottsdale. The initial term of the contract will be for one (1) year and have a maximum contract term amount of \$750,000. This on-call contract may be renewed for up to four (4) additional one-year terms. Renewal of the contract will be based on the successful performance by the firm and the needs of the City. The contract maximum may be increased at the time the option is exercised, or at another time deemed prudent by the mutual agreement of both parties. The City may award one or more On-Call Services Contracts from this RFQ. The City makes no guarantee of work under an on-call services contract.

The services requested under an On-Call Services Contract will typically be for projects that are small to medium in size and limited in scope. They generally include work with short deadlines, scopes that may need to be developed quickly, and/or require expertise not currently in-house. In some cases, the Project Manager may request work involving complex requirements and multiple tasks and coordination of disciplines (structural engineer, mechanical engineer, electrical engineer, lighting designer, LEED consultant). Projects may or may not require review from the City’s Development Review Board for concept approval.

The on-call services may include federal-aid projects. If selected to participate on a federal-aid project the consultant and any proposed sub-consultants must certify in writing that they are not currently debarred and/or suspended and excluded from participation in federal programs.

### **SECTION II - SCOPE OF SERVICES**

At the beginning of each Task Order, a scope of work conference will be scheduled to define design services required of the architect. The range of services which architects(s) may be asked to provide includes, but is not limited to, the following design and contract administration services:

- Project Administration and Supporting Services
- Design Services (Schematic Design, Design Development, Construction Documents)
- Programming and Conceptual Design
- Project Feasibility and Preliminary Cost Estimating Services
- Site Design/Planning
- Rendering/Modeling
- Planning and Permitting Services
- Construction Drawings and Technical Specifications
- Construction Administration Services as Architect of Record
- Materials Research/Specifications
- Interior and Exterior Design
- Signage and Graphic Design
- Space Planning
- Facilities Planning
- ADA site and project review/plans
- Building Condition and Reuse Feasibility Studies
- Value Analysis
- Existing Facilities Surveys

- Building Lighting Design
- Energy Analysis and Design
- Green Building Options and Design
- LEED Evaluation
- Lifecycle Evaluation
- Historic Preservation

This contract may be used by the City’s Capital Project Management Division and/or Facilities Management Division

**SECTION III - STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA**

Qualified architects will submit electronic Statements of Qualifications for review by the City’s selection panel (See Section IV, below). Evaluation of the submittals will be based on the following:

A. General Information	Max. 50 Points
B. Firm’s Capabilities and Relevant Experience	Max. 300 Points
C. Approach to Performing Services	Max. 300 Points
D. Experience of Key Personnel	Max. 250 Points
E. Overall Evaluation	Max. 100 Points

**A. General Information**

Provide the number of years in business, general scope of services provided (including principal area(s) of expertise), years supplying the type of services offered, and number of employees. Indicate your firm’s management and organizational capabilities with regards to staff and resource capacity to respond to critical deadlines and complex scope requirements on short notice—including the ability to perform on-site work with limited advance notice. List similar services your firm has provided to other public agencies. Provide any information that you believe makes your work superior to that of others or information about your specialty or particular skill.

**B. Firm’s Capabilities and Relevant Experience**

Identify at least 5 projects designing public facilities with a construction budget of no more than \$5M which the firm has completed. State whether the design was completed under an on-call contract. For each project provide the following:

- a. Description of project;
- b. Role of each person;
- c. Construction delivery method;
- d. Project’s original estimated construction cost and final construction cost;
- e. Project owner;
- f. Reference information (Owner’s representative/Project Manager and telephone number).

Describe the overall process from identification of issues and design criteria, evaluation of options, key design features, and value engineering. Identify site/project specific challenges and how the team (this may include project owner and CMAR) reached consensus and overcame issues. Provide a statement as to whether or not the project was a success and why. Special consideration will be given to firms that have provided services on similar successful projects.

**C. Approach to Performing the Required Services**

Discuss the specific strategies, analysis, and procedures that you will employ during this contract to identify City criteria, a feasible alternative, and develop a cost conscious design. Demonstrate your understanding of municipal projects by discussing key stakeholders, significant issues, opportunities and challenges that, in your firm's experience, must be addressed in order to develop a successful project, regardless of the scope and budget. Identify your firm's familiarity with the City of Scottsdale's procedures and design standards.

**D. Experience of Key Personnel**

For each key person identified, list similar municipal projects in which they have played a primary role. Discuss the proposed project manager's experience in general and specific to the City of Scottsdale, if any. Include a statement of commitment for the ability of the individual(s) to serve as Project Manager for all assignments negotiated under these contracts.

Identify any proposed sub-consultant, including key staff names and the experience and qualifications of the individuals and previous experience working together (see Section V below).

**E. Overall Evaluation of the Team**

This is to be determined by the selection panel. No submittal response to required.

**SECTION IV - SELECTION PROCESS**

A Selection Panel will evaluate and score each SOQ according to the criteria set forth in Section III above in order to determine a "shortlist" of three (3) to five (5) submitters for the interview phase of the selection process. Finalists may be invited to participate in detailed interviews. An interview invitation letter will provide the evaluation criteria to be used. However, the City reserves the right to select a firm based on the evaluation of the SOQ submittals alone and not to proceed to interviews.

At the conclusion of the selection process, each of the rated elements for each submitter will be evaluated to determine the best qualified firm for this request. If the City is unsuccessful in negotiating a contract with the best qualified firm, the City may then negotiate with the second most qualified firm until a contract is executed, or may decide to terminate the selection process.

The following tentative schedule has been prepared for this project:

SOQ's due	Tuesday, September 10, 2013
SOQ evaluations complete	Tuesday, September 17, 2013
Interview Invitation Letter mailed	Friday, September 20, 2013
Anticipated Interviews/Selection	Week of October 7, 2013

Until the award and execution of the contract, the City will only release the name of the selected firm. All other information received by the City in response to the SOQ or contained in the proposals will be confidential to avoid disclosure of the contents that may be prejudicial to the competing offeror(s) during the selection process. The submittal of the winning firm will be open to public inspection upon request after the contract is awarded and the City has executed the contract with the selected firm.

**SECTION V - CONTRACTS AND FEES**

The City will not request or consider fees, price, man-hours or any other cost information at any time during the selection process, including the selection of firms to be interviewed, the final list, the order of preference or any other purpose.

**For firms submitting proposals, the City requires a statement in the proposal that the firm has read and understood all the elements laid out in the Architectural Services Contract.**

**Exclusive Agreements:** The City of Scottsdale requests that no exclusive agreements be made with potential sub-consultants.

## **SECTION VI - INDEMNIFICATION & INSURANCE REQUIREMENTS**

The City of Scottsdale requires the selected firm to execute a City of Scottsdale Architectural Services Contract. The basic format of the City contract is attached to this RFQ as Exhibit A.

The City's Indemnification and Insurance language is included in the contract.

Questions regarding insurance and indemnification shall be addressed prior to submittal in writing, by e-mail, to the e-mail address listed at the end of this document.

## **SECTION VII – SUBMITTAL REQUIREMENTS**

Reply to this request with an electronic Statement of Qualifications submittal which is **not more than ten (10) pages** plus a **one-page cover letter**. **Maximum document size is 10MB**. Pages that have project photos, charts, and graphs will count toward the maximum number of pages. However, a cover letter and/or cover will not be considered part of the ten-page limitation, nor will resumes. Resumes for each key team member shall be limited to a maximum length of one page, must not include pictures or submittal information, and should be incorporated as an appendix at the end of the SOQ.

The minimum font size shall be 10-point and font used shall be Arial, Bookman, Cambria, Century or Times New Roman only. The submittal must be printable. Table of Contents or tabbed divider pages will not be counted towards the maximum number of pages. **Submittals which do not conform to the requirements will not be considered.**

The SOQ submittal must include:

- A one-page cover letter prepared on the company's letterhead and signed by a principal of the company. Provide primary contact person and contact person's telephone number and e-mail address. This sheet is not included in your page count.
- The firm's responses to the RFQ criteria in order and titled as listed using a MAXIMUM of 10 pages, each 8½" x 11" in size.
- A statement in the proposal that the firm has read and understood all the elements laid out in the Architectural Services Contract.
- Addenda Acknowledgement (if applicable).

Please be advised that failure to comply with the following criteria will be grounds for disqualification and will be strictly enforced:

- Receipt of submittal past specified cut-off date and time.
- Adherence to number of page, page size, and font requirements.
- Adherence to electronic file size requirements.

## **SECTION VIII - GENERAL INFORMATION**

**City Website:** This Request for Qualifications will be posted on the City's website. The address is: <http://eservices.scottsdaleaz.gov/eservices/solicitations>.

**Instructions:** **The City of Scottsdale will not be held responsible for any oral instructions.** Any changes to this Request for Qualifications will be in the form of an addendum, which will be furnished to all registered Request for Qualifications holders. A statement of receipt of all addenda must be included in the submittal or transmittal.

**City Rights:** The City of Scottsdale reserves the right to reject any oral Statements of Qualifications, to waive any informality or irregularity in any Statement of Qualifications received, and to be the sole judge of the merits of the respective Statements of Qualifications received.

**Release of Project Information:** The City shall coordinate the release of all public information concerning the project, including selection announcements and contract awards. Firms desiring to release information to the public must receive prior written approval from the City.

**Contact with City Employees:** All firms interested in this project (including the firm's employees, representatives, agents, lobbyists, attorneys, and sub consultants) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the evaluation panel, the City Manager, Executive Directors, Department Heads, and other staff. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public and to protect the integrity of the selection process. All contact on this selection process should be addressed to the authorized representative identified below.

**Protests:** Protests of this solicitation will be subject to the provisions of Scottsdale Revised Code §2-213 et. seq.

**No Preferential Treatment or Discrimination:** In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

**Lawful Presence in the United States for Persons:** A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that verifies that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS/INDIVIDUALS/SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations Limited Partnerships or General Partnerships)*

By submitting your quote, bid, proposal and/or indicating your desire to enter in a contract with the City you are agreeing that if you are selected as the awardee and meet the criteria of a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation to verify of that statement. Types of acceptable documentation copies are an Arizona Drivers License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion before to issuing any contract.

If you have previously done business with the City and have already filed the above Affidavit with copies of an acceptable documentation please indicate when you filed the affidavit. If your approved Affidavit is already on file with the City, you have complied with this requirement.

If you fail to provide a completed Affidavit and accompanying copy of your acceptable documentation, or if you do not advise the City of your previous filing within 10 calendar days after receiving the City's request you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at: <http://www.scottsdaleaz.gov/Assets/Public+Website/purchasing/AffidavitHB2008.pdf>.

## **SECTION IX - STATEMENT OF QUALIFICATIONS SUBMITTAL TIME AND PLACE**

Submittals must be received no later than **3:00 p.m., Tuesday, September 10, 2013**. The City reserves the right to cancel or modify this Request for Qualifications at any time.

The electronic submittal shall be submitted in Adobe PDF format and uploaded to: <https://securemail.scottsdaleaz.gov/dropbox/emercado@scottsdaleaz.gov>. The subject line of the email **MUST READ: SOQ-On-call Architectural Services & Your Company Name**. Please upload your submission as a single adobe file. An email confirming your submission will serve as a receipt. **Please note that emails are not automatic, but an acknowledgement will be sent as promptly as possible.**

## **SECTION X – QUESTIONS**

Questions pertaining to the consultant selection process or contract issues should be directed in writing by fax or email to:

Elaine Mercado, Senior Project Manager  
**E-mail:** [emercado@scottsdaleaz.gov](mailto:emercado@scottsdaleaz.gov)  
CITY OF SCOTTSDALE/CAPITAL PROJECT MANAGEMENT  
7447 E. Indian School Road, Suite 205  
Scottsdale, AZ 85251  
**Fax: (480) 312-7971**

Questions must be received in writing by **2:00 p.m., Thursday, August 29, 2013**. Responses to questions will be posted to the City's website at the address above by close of business **Tuesday, September 3, 2013**.

Verbal inquiries, in person or by telephone, will not be answered.

### **Attachments:**

Exhibit A – Architectural Services Contract



**CITY OF SCOTTSDALE**

**ARCHITECTURAL SERVICES CONTRACT**

**PROJECT NO.**

**CONTRACT NO. 201\_\_ - \_\_\_\_\_ -COS**

**THIS CONTRACT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, between the City of Scottsdale, an Arizona municipal corporation, the "CITY" and \_\_\_\_\_, an \_\_\_\_\_, the "ARCHITECT."

**RECITALS**

- A.** The Mayor of the City of Scottsdale is authorized by provisions of the City Charter to execute contracts for professional services; and
- B.** The City intends to contact for Architectural services with \_\_\_\_\_ (Insert a brief description of the services to be performed); and
- C.** The Architect is qualified to render the services desired by the City.

**FOR AND IN CONSIDERATION** of the parties' mutual covenants and conditions, it is agreed between the City and the ARCHITECT as follows:

**1.0 Description, Acceptance, Documentation**

**1.1 Scope of Services**

The Architect will act under the authority and approval of the Contract Administrator to provide the Architectural services required by this Contract.

The Architect is assigned the tasks specified in the attached Exhibit A, Project Scope of Work, which is incorporated by reference and made a part of this Contract.

The Architect must obtain all necessary information to complete the tasks specified in Exhibit A, Project Scope of Work.

**1.2 Acceptance and Documentation**

- A.** Each task will be reviewed and approved by the Contract Administrator to determine acceptable completion.

- B. The City will provide all necessary information to the Architect for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Architect.

## **2.0 Fees and Payments**

### **2.1 Fee Schedule**

The amount paid to the Architect will not exceed \$\_\_\_\_\_.

The Architect will be paid at the hourly rates shown in Exhibit A:

### **2.2 Payment Approval**

The time spent for each task must be recorded and submitted to the Contract Administrator. The Architect must maintain all necessary documents and accounting records pertaining to time billed and to costs incurred and make these materials available at all reasonable times during the contract period.

Monthly payments will be made to the Architect on the basis of a progress report submitted by the Architect for work completed through the last day of the preceding calendar month. Each task is subject to review and approval by the Contract Administrator to determine acceptable completion.

The Contract Administrator will prepare a partial payment request document for the Architect's acceptance. However, not more than 90% of the total contract price will be paid before City's final acceptance of all completed work.

The Contract Administrator reserves the exclusive right to determine the amount of work performed and payment due the Architect on a monthly basis.

All charges must be approved by the Contract Administrator before payment.

#### **2.2.1 Payment Terms**

The City of Scottsdale's payment terms for architectural work under State of Arizona A.R.S. Title 34 requirements is 14 days after invoice submittal by the architect and the work is certified and approved by the City Contract Administrator.

The City has 7 days after receipt of the invoice to prepare and issue a written finding setting forth those items in detail which are not approved for payment under the contract and which are not certified by the City Contract Administrator. Until such time as such issues are resolved and certified by the City the 14 day payment term will not have commenced.

### **2.3 Price Adjustment**

Price increases may only be requested by the Architect, 30 days before the annual anniversary date of the Contract. Failure to do so may result in the denial of any increase requested.

Price increases will become effective only after approval by the Contract Administrator and the Purchasing Director and will be effective for at least 1 year from the date of approval.

Approved price increases will be applied to the unit pricing in the Contract as a percentage increase.

The increased rate will be based upon mutual consent of the Architect and the Contract Administrator, however, the Contract Administrator will evaluate the Contractor's performance, services and records documentation to determine the appropriateness of the increase requested.

The percentage increase in the unit pricing may not exceed 5%.

### **3.0 General Terms and Conditions**

#### **3.1 Contract Administrator**

The Contract Administrator for the City will be \_\_\_\_\_, or designee. The Contract Administrator will oversee the performance of this Contract, assist the Architect in accessing the organization, audit billings, and approve payments. The Architect must submit all reports and special requests through the Contract Administrator. The Contract Administrator has the authority to authorize Change Orders up to the limits permitted by the City's Procurement Code.

#### **3.2 Term of Contract**

The Term of the Contract is for \_\_\_\_\_.

This Contract must be approved by the City Council of the City of Scottsdale, Arizona and signed by its Mayor and attested by the City Clerk. This Contract is in full force and effect when it is signed by the City and the Architect.

If any tasks remain incomplete after the completion time period, the Contract Administrator must give written approval to continue the Contract.

#### **3.3 Termination or Cancellation of Contract**

The City may terminate this Contract or abandon any portion of the project that has not been performed by the Architect.

**Termination for Convenience:** The City has the right to terminate this Contract or any part of it for its sole convenience with 30 days written notice. If terminated, the Architect must immediately stop all work and will immediately cause any of its suppliers and Subcontractors to stop all work. As payment in full for services performed to the date of the termination, the Architect will receive a fee for the percentage of services actually completed. This fee will be in the amount mutually agreed upon by the Architect and the City, based on the Scope of Work. If there is no mutual agreement, the Contract Administrator will determine the percentage of completion of each task detailed in the Scope of Work and the Architect's compensation will be based on this determination. The City will make this final payment within 60 days after the Architect has delivered the last of the partially completed items. The Architect will not be paid for any work done after receipt of the notice of termination or for any costs incurred by

the Architect's suppliers or Subcontractors, which the Architect could reasonably have avoided.

**Cancellation for Cause:** The City may also cancel this Contract or any part of it with 7 days notice if the Architect defaults, or if the Architect fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance as determined by the Contract Administrator and failure to provide the City, upon request, with adequate assurances of future performance are all causes allowing the City to terminate this Contract for cause. Upon cancellation for cause, the City will not be liable to the Architect for any amount, and the Architect will be liable to the City for all damages sustained by the default which caused the cancellation.

If the Architect is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this Contract immediately after giving notice to the Architect.

If the City cancels this Contract or any part of the Contract services, the City will notify the Architect in writing, and upon receiving notice, the Architect must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Architect must deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be the City's sole responsibility.

The Architect must appraise the work it has completed and submit its appraisal to the City for evaluation.

If the Architect fails to fulfill in a timely and proper manner its obligations, or if the Architect violates any of the terms of this Contract, the City may withhold any payments to the Architect for the purpose of setoff until the exact amount of damages due the City from the Architect is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section 3.3.

### **3.4 Funds Appropriation**

If the City Council does not appropriate funds to continue this Contract, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice of termination to the Architect at least 30 days before the end of its current fiscal period and will pay to the Architect all approved charges incurred through the end of that period.

### **3.5 Audit**

The City may audit all of the Architect's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

The Architect's records (hard copy, as well as computer readable data), and any other supporting evidence necessary to substantiate any claims related to this Contract must be open to inspection and subject to audit and reproduction by the City's authorized representative as necessary to permit evaluation and verification of the cost of the work, and any invoices, change orders, payments or claims submitted by the Architect or any of his payees. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Architect's records and personnel throughout the term of this Contract and for a period of 3 years after the final payment.

The Architect must require all Subcontractors and material suppliers (payees) to comply with the provisions of this section by insertion of these requirements in a written contract between the Architect and payee. These requirements will apply to all Subcontractors.

If an audit discloses overcharges by the Architect to the City in excess of 1% of the total contract billings, the actual cost of the City's audit must be reimbursed to the City by the Architect. Any adjustments and payments made as a result of the audit or inspection of the Architect's invoices and records will be made within a period of time not to exceed 90 days from presentation of the City's findings to the Architect.

This audit provision includes the right to inspect personnel records as required by Section 3.22.

### **3.6 Ownership of Project Documents**

All documents, including but not limited to, field notes, design notes, tracings, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Architect.

When the work detail covers only the preparation of preliminary reports or plans, there will be no limitations upon the City concerning use of the plans or ideas in the reports or plans for the preparation of final construction plans. The City will release the Architect from any liability for the preparation of final construction plans by others.

### **3.7 Completeness and Accuracy**

The Architect will be responsible for the completeness and accuracy of its work, including but not limited to, survey work, reports, supporting data, and drawings, sketches, etc. prepared by the Architect and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Architect. Additional construction added to the project will not be the responsibility of the Architect unless the need for additional construction was created by any error, omission, or negligent act of the Architect. The City's acceptance of the Architect's work will not relieve the Architect of any of its responsibilities.

### **3.8 Attorney's Fees**

Should either party bring any action for relief, declaratory or otherwise, arising out of this Contract, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees, reasonable costs and expenses as determined by the court sitting without a jury. All these fees, costs, and expenses will be considered to have accrued on the commencement of the action and will be enforceable whether or not the action is prosecuted to judgment.

### **3.9 Successors and Assigns**

This Contract will be binding upon the Architect, its successors and assigns, including any individual, or other entity with or into which the Architect may merge, consolidate, or be liquidated, or any individual or other entity to which the Architect may sell or assign its assets.

### **3.10 Assignment**

Services covered by this Contract must not be assigned or sublet in whole or in part without first obtaining the written consent of the Contract Administrator.

### **3.11 Subcontractors**

The Architect may engage any additional Subcontractors as required for the timely completion of this Contract. If the Architect subcontracts any of the work required by the Contract, the Architect remains solely responsible for fulfillment of all the terms of this Contract.

The Architect will pay its Subcontractors within 7 calendar days of receipt of each progress payment from the City. The Architect will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Architect will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Architect. No Contract between the Architect and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

If the Architect fails to make payments in accordance with these provisions, the City may take any of one or more of the following actions and the Architect agrees that the City may take these actions:

- A. To hold the Architect in default under this Contract;
- B. Withhold future payments including retention until proper payment has been made to Subcontractors in accordance with these provisions;
- C. Reject all future offers to perform work for the City from the Architect for a period not to exceed 1 year from the completion date of this project; or
- D. Terminate this Contract.

### **3.12 Alterations or Additions to Scope of Services**

The total Scope of the Architectural Services to be performed is stated in this Contract. Any services requested outside the scope of work are additional services. The Architect will not perform these additional services without a written Change Order approved by the City. If the Architect performs additional services without a Change Order, the Architect will not receive any additional compensation.

### **3.13 Modifications**

Any amendment or modification of the terms of this Contract must be in writing and will be effective only after approval of all parties to this Contract.

### **3.14 Conflict of Interest**

The Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Architect any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to annul this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

The City may cancel any Contract or Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the City's departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. The cancellation will be effective when written notice from the City is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. 38-511).

The Architect will fully reveal in writing any financial or compensatory agreement which it has with a prospective bidder before the City's publication of documents for bidding.

### **3.15 Force Majeure**

Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts will include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

### **3.16 Taxes**

The fee listed in this Contract includes all taxes applicable to the services authorized. The City will have no obligation to pay additional amounts for taxes of any type.

### **3.17 Advertising**

No advertising or publicity concerning the City's use of the Architect's services will be undertaken without first obtaining written approval of the Contract Administrator.

### **3.18 Counterparts**

This Contract may be executed in one or more counterparts, and each executed duplicate counterpart will possess the full force and effect of the original.

### **3.19 Entire Agreement**

This Contract contains the entire understanding of the parties and no representations or agreements, oral or written, made before its execution will vary or modify the terms of this Contract.

### **3.20 Arizona Law**

This Contract must be governed and interpreted according to the laws of the State of Arizona.

### **3.21 Equal Employment Opportunity**

The Architect will comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). The Architect will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

**No Preferential Treatment or Discrimination:** In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

### 3.22 Compliance with Federal and State Laws

The Architect accepts the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. In addition, the Architect accepts the applicability to it of A.R.S. §34-301 and 34-302. The Architect will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

**Under the provisions of A.R.S. §41-4401, the Architect warrants to the City that the Architect and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Architect and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).**

A breach of this warranty by the Architect or any of its subcontractors will be considered a material breach of this Contract and may subject the Architect or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the Architect or any subcontractor who works on this Contract to ensure that the Architect or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Architect and any of its subcontractors to ensure compliance with this warranty. The Architect agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The City will not consider the Architect or any of its subcontractors in material breach of this Contract if the Architect and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the Architect enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The Architect will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Architect's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

### **3.23 Compliance with Americans with Disabilities Act**

Architect acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Architect will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Architect agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Architect, its employees, agents or assigns will constitute a material breach of this Contract.

### **3.24 Contracts with Sudan and Iran**

In accordance with A.R.S. §35-391-06 and §35-393-06, and the Contractor certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and §35-393(12).

### **3.25 Valuation of Architect's Performance**

The Architect will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (linework, lettering, etc.)
- Working relationship with City staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

### **3.26 Notices**

All notices or demands required by this Contract must be given to the other party in writing, delivered by hand or by registered or certified mail at the addresses stated below, or to any other address the parties may substitute by giving written notice as required by this section.

On behalf of the Architect:

On behalf of the City:

Scottsdale, AZ 85251

If hand delivered, Notices are received on the date delivered. If delivered by certified or registered mail, Notices are received on the date indicated on the receipt. Notice by facsimile or electronic mail is not adequate notice.

### **3.27 Independent Contractor**

The services the Architect provides to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

### **3.28 Ineligible Bidder**

The preparer of bid specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

### **3.29 Indemnification**

To the fullest extent permitted by law, the Architect must defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees against all allegations, demands, suits, actions, claims, damages, losses, expenses, attorney fees, court costs, cost of appellate proceedings, and all claim adjusting and handling expense arising out of any negligent or intentional acts, actions, errors, or omissions to the extent caused by the Architect. The Architect is defined as the Architect, its successors, assigns and guarantors, any subcontractor or anyone directly or indirectly employed by the Architect or subcontractor or anyone for whose acts the Architect or subcontractor may be liable and any injury or damages claimed by any of the Architect's and subcontractor's employees.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this section and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section must not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

## **4.0 Insurance**

A current standard Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

**Additionally Certificates of Insurance submitted without referencing a Contract number will be subject to rejection and returned or discarded.**

#### 4.1 Insurance Representations and Requirements

- A. General: The Architect agrees to comply with all applicable City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of the Architect, the Architect must purchase and maintain, at its own expense, the required minimum insurance with insurance companies duly licensed or approved to conduct business in the State of Arizona and with an A.M. Best's rating of B++6 or above with policies and forms satisfactory to City. Failure to maintain insurance as required may result in cancellation of this Contract at the City's option.

- B. No Representation of Coverage Adequacy: By requiring the insurance, City does not represent that coverage and limits will be adequate to protect the Architect. The City reserves the right to review any and all of the insurance policies and endorsements cited in this Contract but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements in this Contract or failure to identify any insurance deficiency will not relieve the Architect from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Contract.
- C. Coverage Term: The Architect must maintain all required insurance in full force and effect until all work or services are satisfactorily performed and accepted by the City of Scottsdale, unless specified otherwise in this Contract.
- D. Claims Made: If any required insurance policies are written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or service. The Architect must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for the 3 year period.
- E. Policy Deductibles and or Self Insured Retentions: The required policies may provide coverage which contain deductibles or self-insured retention amounts. The Architect is solely responsible for any deductible or self-insured retention amount and the City, at its option, may require the Architect to secure payment of the deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Architect must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Architect in this Contract. The Architect is responsible for executing the Contract with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

- G. Evidence of Insurance: Before commencing any work or services under this Contract, the Architect must furnish the Contract Administrator with Certificate(s) of Insurance, or formal endorsements issued by the Architect's insurer(s) as evidence that policies are placed with acceptable insurers and provide the required coverages, conditions, and limits of coverage and that the coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the required policies expire during the life of this Contract, the Architect's must forward renewal Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

Certificates shall specifically cite the following provisions:

1. The City of Scottsdale, its agents, representatives, officers, directors, officials and employees are named as an Additional Insured under the following policies:
  - a) Commercial General Liability
  - b) Auto Liability
  - c) Excess Liability - Follow Form to underlying insurance as required.
2. The Architect's insurance must be primary insurance for all performance of work under this Contract.
3. All policies, except Professional Liability insurance if applicable, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by the Architect under this Contract.
4. If the Architect receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Architect's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

#### 4.2 Required Coverage

- A. Commercial General Liability: The Architect must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.

- B. Professional Liability: The Architect must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Architect, or anyone employed by the Architect, or anyone for whose acts, mistakes, errors and omissions the Architect is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims. If the Professional Liability insurance policy is written on a “claims made” basis, coverage must extend for 3 years past completion and acceptance of the work or services, the Architect must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.
- C. Vehicle Liability: The Architect must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each accident on the Architect’s owned, hired, and non-owned vehicles assigned to or used in the performance of the Architect’s work or services under this Contract. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be “follow form” equal or broader in coverage scope than the underlying insurance.
- D. Workers Compensation Insurance: The Architect must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Architect’s employees engaged in the performance of work or services under this Contract, and must also maintain Employers’ Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

## 5.0 Software Licenses

If The Architect provides to the City any software licenses, the following provisions apply:

### 5.1 Source Code Availability

- A. The Architect must furnish the City, without charge, a single copy of the Source Code for the Software immediately upon the occurrence of any of the following:
  - 1. The Architect becomes insolvent; or
  - 2. The Architect ceases to conduct business; or
  - 3. The Architect makes a general assignment for the benefit of creditors; or
  - 4. A petition is filed in Bankruptcy by or against the Architect.
- B. Use of the Source Code must be subject to the same restrictions as the Software itself.
- C. The City must have the right to modify the Source Code in any manner the City believes is appropriate, provided that the Source Code as modified must remain subject to the restrictions of Section 5.1(B).

## 5.2 Proprietary Protection

- A. The City agrees that if the Architect informs the City that the Software is confidential information or is a trade secret property of the Architect; the Software is disclosed on a confidential basis under this Contract and in accordance with the terms of this Contract.
- B. The Architect must not use or disclose any knowledge, data or proprietary information relating to the City obtained in any manner.
- C. As permitted by Arizona Law, the parties agree that during the term of this Contract and of all Licenses granted under this Contract, and for a period of 7 years after termination of this Contract and of all licenses granted by this Contract, to hold each others' confidential information in confidence.  
The parties agree, unless required by government regulations or order of court, not to make each others' confidential information available in any form to any third party or to use each other's confidential information for any purposes other than the implementation of this Contract. However, if the Architect's confidential information is requested to be divulged under the provisions of the Arizona Public Records Act, A.R.S., Title 39, the Architect must reimburse the City for the full cost of the City's refusal to release the information, including the costs of litigation, the City's attorney fees, fines, penalties or assessments of the opposing party's attorney fees. Each party agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the provisions of this Contract.

## 5.3 Non-Infringement

The Architect warrants that the Software provided to the City does not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary or property right of any person or entity.

In the event of a claim against the City asserting or involving such an allegation, the Architect will defend, at the Architect's expense, and will indemnify and hold harmless the City against any loss, cost, expense (including attorney fees) or liability arising out of the claim, whether or not the claim is successful. In the event an injunction or order is obtained against use of the Software, or if in the Architect's opinion the Software is likely to become the subject of a claim of infringement, the Architect will, at its option and its expense:

1. Procure for the City the right to continue using the Software; or
2. Replace or modify the software so that it becomes non-infringing (this modification or replacement must be functionally equivalent to the original); or
3. If neither 1 nor 2 is practicable, repurchase the Software on a depreciated basis utilizing a straight line 5 year period, commencing on the date of acceptance.

#### **5.4 Third Party License**

The Architect must sublicense to the City any and all third party Software required in this Contract. The City reserves the right to accept or reject third party license terms. If the City rejects the terms of a third party license, it will be the Architect's responsibility to negotiate acceptable terms or to supply Software from another source with terms acceptable to the City. The City's acceptance of the third party license terms will not be unreasonably withheld.

#### **6.0 Severability and Authority**

##### **6.1 Severability**

If any term or provision of this Contract is found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

##### **6.2 Authority**

Each party warrants that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each party has been properly authorized and empowered to enter into this Contract. Each party acknowledges that it has read, understands, and agrees to be bound by the terms and conditions of this Contract.

#### **7.0 Request For Taxpayer I.D. Number & Certification I.R.S. W-9 Form**

Upon request, the Contractor shall provide the required I.R.S. W-9 FORM which is available from the IRS website at [www.IRS.gov](http://www.IRS.gov) under their forms section.

The City of Scottsdale by its Mayor and City Clerk have subscribed their names this \_\_\_\_ day  
of \_\_\_\_\_, 201\_\_.

CITY OF SCOTTSDALE  
an Arizona Municipal Corporation

ATTEST:

\_\_\_\_\_  
W.J. "Jim" Lane  
Mayor

\_\_\_\_\_  
Carolyn Jagger  
City Clerk

ARCHITECT:

By: \_\_\_\_\_

Its: \_\_\_\_\_

RECOMMENDED:

\_\_\_\_\_  
Derek E. Earle  
City Engineer

\_\_\_\_\_  
Edward M. Howard  
Risk Management Director

\_\_\_\_\_  
Contract Administrator

APPROVED AS TO FORM:

\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: (attorney's name printed here, if other  
than Bruce)



**EXHIBIT A**  
**PROJECT DESCRIPTION**  
**SCOPE OF WORK**

SAMPLE