

**RESOLUTION NO. 2023-16**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA,  
ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH  
COCONINO FOR AN EMERGENCY EVACUATION AND RE-ENTRY PLAN.**

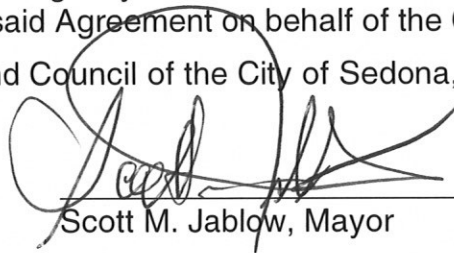
*WHEREAS*, the City of Sedona ("City") and the Coconino County have reached an intergovernmental agreement concerning the Emergency Evacuation and Re-entry Plan subaward of federal grant funds under the Coronavirus State and Local Fiscal Recovery Fund program; and

*WHEREAS*, the City has reviewed the terms of the intergovernmental agreement and determined that it is in the proper form required by A.R.S. § 11-952;

**BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA,  
ARIZONA THAT:**

The City of Sedona, through its Mayor and Council, hereby approves the Intergovernmental Agreement with the Coconino County for the acceptance and expenditure of funds in the approximate amount of eighty-three thousand two hundred and forty-seven dollars (\$83,247) for the Emergency Evacuation and Reentry Plan, and the City Manager is authorized to execute said Agreement on behalf of the City.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 24<sup>th</sup> day of May, 2023.



\_\_\_\_\_  
Scott M. Jablow, Mayor

ATTEST:



\_\_\_\_\_  
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
Kurt W. Christianson, City Attorney

**INTERGOVERNMENTAL AGREEMENT  
BY AND BETWEEN  
COCONINO COUNTY  
AND  
CITY OF SEDONA  
FOR  
EMERGENCY EVACUATION AND REENTRY PLAN**

Entity Legal Name:	City of Sedona
Unique Entity Identify (UEI) Number:	M5VJZN2SMSN5
Mailing Address for Payment:	102 Roadrunner Drive Sedona, AZ 86336
Period of Performance:	Start: 07/01/2022 End: 12/31/2024
Total Amount of Federal Funds Obligated:	\$83,247
Budget Period:	Start: 07/01/2022 End: 12/31/2024
Approved Indirect Cost Rate:	0%
Match or Cost Sharing:	N/A

<b>Federal Award Information funding this award in part or in its entirety</b>	
Assistance Listing #:	21.027
Program Name from Assistance Listing #:	Coronavirus State and Local Fiscal Recovery Fund
Federal Award Identification Number (FAIN):	SLFRP0420
Federal Award Date:	05/10/2021
Total Amount of the Federal Award to Pass-Through Entity (PTE):	\$27,868,531
Federal Award Project Description:	Coronavirus State and Local Fiscal Recovery Fund (SLFRF)
Name of Federal Awarding Agency, PTE, and Contact Information for Awarding Official at PTE	United States Department of the Treasury Attn: State and Local Fiscal Recovery Funds 1500 Pennsylvania Avenue NW, Washington, DC 20220 SLFRF@treasury.gov 202-622-6415
Is the award for research and development (R&E)?	No
Indirect Coast Rate for the Federal Award (PTE's rate and base)	N/A

THIS INTERGOVERNMENTAL AGREEMENT (hereinafter referred to as "IGA" or "Agreement") is made and entered into by and between COCONINO County (hereinafter "County") and CITY OF SEDONA, collectively "the Parties," for the provision of contracted services pursuant to A.R.S. § 11-952 et seq. to enter into IGA to jointly exercise powers common to the parties to contract for the services specified. This Agreement is a subaward of federal grant funds under the Coronavirus State and Local Fiscal Recovery Fund program (Assistance Listing # 21.027).

Whereas, County issued an RFI seeking information under the ARPA Covid-19 Supports for Eligible Local Governments category under County's State and Local Fiscal Recovery Fund allocation under the American Rescue Plan Act for the priority areas of behavioral health, housing, business supports, workforce development & education, support for vulnerable populations, & Covid-19 Supports for Eligible Local Governments;

Whereas, Coconino County and the City of Sedona have voluntarily developed an Emergency Evacuation and Reentry plan within its combined jurisdictions;

Whereas, both parties are authorized to enter into this agreement pursuant to A.R.S. § 11-952.

**NOW, THEREFORE,** in consideration of the mutual agreements set forth herein, the Parties agree as follows:

**I. PURPOSE**

The purpose of this Agreement is to authorize use and provide funds from the American Rescue Plan Act (“ARPA”) to the City of Sedona under Treasury Expenditure Category Administrative Transfers to Other Units of Government.

On January 6, 2022, the U.S. Department of Treasury (“Treasury”) released the Final Rule (the “Rule”), which identifies many ways in which the ARPA’s Coronavirus State and Local Fiscal Recovery Funds (“CSLFRF”) can support communities working to reduce and respond to the adverse health and economic impacts resulting from the COVID-19 pandemic.

Under this Agreement, City of Sedona’s services must be provided in compliance with the rules of the ARPA. The most current published rules can be found at: [Treasury’s Final Rule; https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf](https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf).

**II. TERM OF AGREEMENT, TERMINATION, MODIFICATIONS, AND AMENDMENTS**

The City of Sedona may use award funds to cover eligible costs incurred during the period that begins on July 01, 2022, and shall be effective through December 31, 2024, contingent upon funding.

The Parties may terminate this Agreement with thirty (30) days written notice. This Agreement is also subject to the cancellation provisions of A.R.S. § 38-511, the provisions of which are incorporated herein. Any termination of this Agreement shall not relieve the Parties of responsibility for its costs incurred prior to the effective date of the termination and any materials obtained for the purposes of this Agreement shall remain the property of the purchasing party and shall be returned to such party in the event of termination of this Agreement.

No waiver, amendment, or modification of this Agreement shall be valid or binding unless written and signed by the parties. Waiver by either party of any breach or default of any clause of this Agreement by the other party shall not operate as a waiver of any previous or future default or breach of the same or different clause of this Agreement.

**1. Obligations of the Parties**

**III. DESCRIPTION OF SERVICES**

City of Sedona shall:

1. Shall provide services in accordance with Attachment A – Project Proposal.
2. Maintain a tracking of total expenditures and report to County on metrics established in Section V or added as additional ARPA guidance becomes available.
3. Gather and complete all required County paperwork, including the Federal Funding Accountability and Transparency Act (“FFATA”) Data Collection Form (Attachment E)

4. Ensure that all contractors and subcontractors are properly licensed in their area of work, as required by the Arizona Registrar of Contractors and any other applicable licensing agencies.
5. Ensure that all contractors and subcontractors comply with the insurance and other applicable provisions contained in this Agreement.

#### IV. USE OF FUNDS

1. City of Sedona understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
2. City of Sedona will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
3. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
4. City of Sedona may use funds provided under this award to cover both direct and indirect costs. As listed in Attachment A – Project Proposal approved budget.

#### V. MANNER OF FINANCING

County shall:

1. Provide a contract amount of up to \$83,247, for costs associated with the activities referenced in Section III and Attachment A - Project Proposal, incorporated into this contract in its entirety.
2. Provide quarterly payment within 45 days upon County's receipt of approved billings for services performed and/or good received as referenced in Section VI. Invoices may include approved purchases by the City of Sedona so long as the purchase was made solely for the benefit of the Emergency Evacuation and Re-Entry Plan Program.
3. Any unused funding pursuant to this agreement at the termination date shall be transferred back to the County and the remaining balance of the award de-obligated.
4. The Assistance Listing No. is 21.027 for all activity associated with this agreement.
5. Questions regarding the appropriate use of the funds and/or invoices shall be resolved by mutual written agreement between the City of Sedona and the County. The County may withhold payment of such questioned costs until reasonable questions are resolved.

The City of Sedona shall:

1. Use the funds received from County only to support the activities outlined in Section III of this Agreement and Attachment A.
2. Agree that all in-state travel expenses shall be paid only in accordance with the Domestic Per Diem rates allowed under the State of Arizona Travel Policy, and the prevailing State of Arizona standard mileage rates, located at <https://gao.az.gov/travel/welcome-gao-travel>.
3. Assure that any expenses reimbursed under this Agreement have not been or will not be reimbursed under any other federal program.
4. Resolve questions regarding the appropriate use of the funds by mutual agreement between the City of Sedona and County.

#### VI. REPORTING REQUIREMENTS

The City of Sedona shall submit quarterly programmatic reports to the County for activities funded under this Agreement. The report deadlines are the 15<sup>th</sup> of the month following each month, e.g. January 1, 2023 – March 31, 2023 report period is due April 15, 2023.

The format for these reports will be developed by the County with input and agreement from the City of Sedona to ensure proper reporting of quantifiable impact metrics as required under Federal guidance. City of Sedona also agrees to comply with any reporting obligations established by Treasury as they relate to

this award.

Performance Metrics: Use attachment C for performance metrics reporting.

Financial Reporting: Use attachment D for reimbursement requests. Itemized receipts must also be provided.

1. **Monitoring:** Per Uniform Guidance 2 C.F.R. § 200.332, to safeguard this subaward and the use is for authorized purposes, in compliance with Federal statues, regulations and the terms and conditions of this Agreement; and that the performance goals are achieved. County and authorized third party shall conduct monitoring activities on agreed monitoring plan and/or necessary activities. Collaboration from City of Sedona at a minimum shall include the following;
  - Site Visits;
  - Desk Reviews;
  - Response to; findings, question costs, or corrective action plans.

## VII. NON-AVAILABILITY OF FUNDS

Every payment obligation of the County under the Agreement is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the County at the end of the period for which funds are available. No liability shall accrue to County in the event this provision is exercised, and the County shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

## VIII. DOCUMENTS INCORPORATED BY REFERENCE

The City of Sedona agrees to comply with terms and conditions applicable to its proposal, Attachment B. In the event of any divergence between this Agreement and the Uniform Terms and Conditions, this Agreement shall control. And terms below are incorporated herein by reference,

### **1. Breach of Agreement**

Either party may provide the other with written notice of any breach of this Agreement and may terminate the Agreement if such breach is not remedied by the responsible party within ten (10) days of receipt of such notice. If the breach is of a nature that cannot be remedied within ten (10) days, the Agreement shall not be terminated if the responsible party has diligently pursued a remedy within the ten-day period.

### **2. No Authority to Bind the Parties**

The Parties have no authority to enter into contracts or agreements on behalf of each other. This Agreement does not create a partnership between the Parties.

### **3. Compliance with Immigration Laws**

As required by Arizona Revises Statutes Section 41-4401 (Government procurement; E-verify requirement; definitions) each party warrants that it complies with all federal immigration laws and regulations, that it shall verify, through the U.S. Department of Homeland Security's E-Verify program, the employment eligibility of each employee who provides services or labor in Arizona for wages or other remuneration, and that it shall require its subcontractors and sub- subcontractors to provide the same warranties to the other party.

#### **4. Non-Discrimination**

Both parties shall comply with all state and federal discrimination requirements, including Arizona Executive Order 2009-09.

#### **5. Mutual Indemnification**

To the extent permitted by Arizona law, each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney fees), hereinafter collectively referred to as "claims," arising out of bodily injury to any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers occurring during the performance of the Agreement.

#### **6. Applicable Law**

This Agreement shall be governed and interpreted by the laws of the State of Arizona.

#### **7. Dispute Resolution**

If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the Parties agree first to try in good faith to resolve the dispute by mediation before resorting to arbitration, if required under A.R.S. 12-1518, litigation or some other dispute resolution procedure. Unless the Parties agree otherwise, the mediator(s) will be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The Parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision is not intended to constitute a waiver of the Parties' right to initiate legal action if a dispute is not resolved through good faith negotiations or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

#### **9. Entire Agreement**

This Agreement embodies the entire understanding of the Parties and supersedes any other agreement or understanding between the Parties relating to the subject matter. The Parties agree that should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect and shall be binding upon the Parties.

#### **10. Insurance**

The Parties maintain general liability insurance and worker's compensation coverage as required by state law and pertinent federal laws and regulations under the State of Arizona Risk Management Plan.

**11. Independent Contractor**

Each Party is an independent contractor and shall be free to exercise its discretion and independent judgment as to the method and means of performance of its work hereunder. The Parties' employees shall not be considered employees of the other Party, and neither Party's personnel will, by virtue of this Agreement, be entitled or eligible, by reason of this agreement, to participate in any benefits or privileges given or extended by the other Party to its employees.

**12. Equal Opportunity Clause**

The provisions of Section 202 Executive Order 11246.41, C.F.R. §60-1.4.41, C.F.R. §60-250.4 and 41, and C.F.R. §60-741.4 shall be incorporated herein by reference and shall be applicable to this IGA unless this IGA is exempted under the rules, regulations or orders of the Secretary of Labor.

**13. Inspection and Audit**

All books, accounts, reports, files, and other records relating to this IGA shall be subject at all reasonable times to inspection and audit by the Parties, federal audit authority, or any other authorized third-party at reasonable times for five (5) years after all funds have been expended or returned to County, whichever is later. Such records shall be produced at Coconino County, or such other location as designated by Coconino County, upon reasonable notice to the Party.

**14. Audits.**

In accordance with the provisions of 2 C.F.R. 200, Subpart F - Audit Requirements, nonfederal entities that expend financial assistance of \$750,000 or more in Federal awards will have a single or a program-specific audit conducted for that year. Non-Federal entities that expend less than \$750,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in 2 C.F.R. 200.503.

**15. Unique Entity Identifier (UEI)**

The City of Sedona must provide the following prior to an Agreement being executed a Unique Entity Identifier (UEI) assigned as proof of current registration in the System for Award Management (SAM/SAM.gov). Additionally, SAM registration must be in good standing and maintained for the term of the Agreement. The SAM registration information may be found at <https://sam.gov/content/home>.

**16. Public Record**

Both parties recognize that work product developed under this Agreement becomes public information.

IX.     FUND MANAGEMENT

The City of Sedona must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with other sources. The City of Sedona must manage funds according to applicable federal regulations for administrative requirements, cost principles and audits.

The City of Sedona must maintain adequate business systems to comply with Federal requirements. Adhere to: 2 C.F.R. 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements, especially those policy requirements in:

- 2 C.F.R. 200, Subpart B, General provisions;
- 2 C.F.R. 200, Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards;
- 2 C.F.R. 200, Subpart D, Post Federal; Award Requirements;
- 2 C.F.R. 200, Subpart E, Cost Principles; and
- 2 C.F.R. 200, Subpart F, Audit Requirements.

A system is adequate if it is: 1) written; 2) consistently followed - it applies in all similar circumstances; and 3) consistently applied – it applies to all sources of funds. The County reserves the right to review all business systems policies.

X.     CLOSEOUT REQUIREMENTS

The City of Sedona shall submit a closeout package with both programmatic report and financial reimbursement request. 2 C.F.R §200.344, requires all information regarding the closeout of subawards that would include compliance delivered with that 90-day timeframe.

At a minimum, the standard closeout package includes all final documents from the City of Sedona:

- a final progress/performance report;
- a final financial report;
- compliance confirmation, including any monitoring and/or site visit reports and communications along with any corrective action plan(s) approved and implemented; and
- financial reconciliation between what was obligated to the City of Sedona and the amount of money the City of Sedona was reimbursed



XI. NOTICES

The City of Sedona shall address all notices relative to this Agreement to:

Kristen Curtis  
ARPA Program Manager  
Coconino County Department of Finance  
219 East Cherry Avenue Flagstaff, AZ 86001  
Email: [kcurtis@coconino.az.gov](mailto:kcurtis@coconino.az.gov)

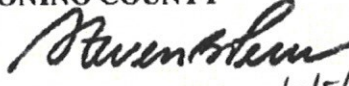
Coconino shall address all notices relative to this Agreement to:

Karen Osburn  
City Manager  
City of Sedona  
102 Roadrunner Drive  
Sedona, AZ 86336  
[kosburn@sedonaaz.gov](mailto:kosburn@sedonaaz.gov)




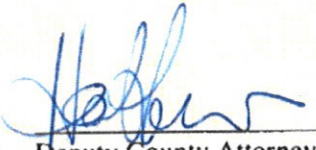
IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the dates indicated.

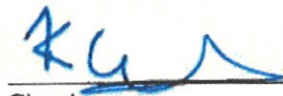
**COCONINO COUNTY**

  
\_\_\_\_\_  
Steve Peru  
County Manager  
6/5/23  
Date

**CITY OF SEDONA**

  
\_\_\_\_\_  
Karen Osburn  
City Manager  
5/24/23  
Date

  
\_\_\_\_\_  
Deputy County Attorney  
for Monique Coody  
6/8/23  
Date

  
\_\_\_\_\_  
City Attorney  
5-24-23  
Date

Attachment A – Project Proposal  
City of Sedona – Summary Sheet  
UEI: M5VJZN2SMSN5

Summary Scope of Work:

Complete an evacuation and re-entry plan for the City of Sedona, including Uptown Sedona and the Brewer area (both in Coconino County). City of Sedona is to coordinate with Coconino County Emergency Management office to hire contractor to advance and better understand emergency preparedness through planning and traffic study data for the City of Sedona, including in the Uptown Sedona and Brewer Road area. Develop response procedures and protocols for implementation when a threat is imminent. Will use plans for training and exercising public safety, residents through community training and region partners.

Performance Period:

July 1, 2022 – December 31, 2024

Performance Metrics: Use attachment C for performance metrics reporting. The cadence of reporting shall be quarterly submitted along with the reimbursement request form.

Financial Reporting: Use attachment D for reimbursement requests. Itemized receipts must also be provided.

Category	Total
Salary and Wages	\$0
Operating	\$83,247
Travel	\$0
Capital	\$0
Total Coconino County	\$83,247

**Attachment B**  
**UNIFORM TERMS AND CONDITIONS**

**1. Definition of Terms**

The City of Sedona referred to as “Contractor” in this attachment agrees to comply with terms and conditions listed below are defined as follows:

- 1.1. “*Attachment*” means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. “*Contract*” means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. “*Contract Amendment*” means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. “*Contractor*” means any person who has a Contract with the County.
- 1.5. “*Days*” means calendar days unless otherwise specified.
- 1.6. “*Exhibit*” means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. “*Gratuity*” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. “*Materials*” means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. “*Procurement Officer*” means the person, or his or her designee, duly authorized by the County to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. “*Services*” means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. “*Subcontract*” means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. “*County*” means the Arizona Coconino County and Department of the County that executes the Contract.
- 1.13. “*County Fiscal Year*” means the period beginning with July 1 and ending June 30.

**2. Contract Interpretation**

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Coconino County Policies and Procedures.
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the County and as they may be amended, the following shall prevail in the order set forth below:

- 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;
  - 2.3.5. Attachments;
  - 2.3.6. Exhibits;
  - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### **3. Contract Administration and Operation**

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the County at or federal audit authority, or any other authorized third-party at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the County and, where applicable, the Federal Government or authorized third party, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract.  
The County shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If County determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by County for testing and inspection.

3.5. Notices. Notices to the Contractor required by this Contract shall be made by County to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the County required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The County shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the County determine that the contractor and/or any subcontractors be found noncompliant, the County may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.8. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.9. Offshore Performance of Work Prohibited.  
Any services that are described in the specifications or scope of work that directly serve the County or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States.  
Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

#### 4. **Costs and Payments**

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the County within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
  - 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
  - 4.3.2. State and Local Transaction Privilege Taxes. The County is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
  - 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the County harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
  - 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the County, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the County for any payment may arise under this Contract beyond the current County fiscal year until funds are made available for performance of this Contract.
- 4.5. Availability of Funds for the current State fiscal year. Should the County Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the County may take any of the following actions:
  - 4.5.1. Accept a decrease in price offered by the contractor;
  - 4.5.2. Cancel the Contract; or
  - 4.5.3. Cancel the contract and re-solicit the requirements.

#### 5. **Contract Changes**

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.



- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The County shall not unreasonably withhold approval.

## 6. Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
- 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the County, its departments, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the County as a result of entering into this contract. However, the parties further agree that the County, its departments, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
- 6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."
- 6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the County against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the County of materials furnished or work performed under this Contract. The County, within the State of Arizona, shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4. Force Majeure.
- 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions- intervention-acts; or failures or refusals 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.
- 6.4.2. Force Majeure shall not include the following occurrences:
- 6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the

following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the County any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## 7. Warranties

- 7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the County of the materials, they shall be:
- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
  - 7.2.2. Fit for the intended purposes for which the materials are used;
  - 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
  - 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
  - 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3. Fitness. The Contractor warrants that any material supplied to the County shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the County.
- 7.5. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.5.1. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - 7.5.2. New Restrictions on Lobbying, 31 C.F.R. Part 21.
  - 7.5.3. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
  - 7.5.4. Generally applicable federal environmental laws and regulations.
  - 7.5.5. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
  - 7.5.6. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
  - 7.5.7. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

- 7.5.8. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
  - 7.5.9. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
  - 7.5.10. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
  - 7.5.11. Hatch Act. Subrecipient agrees that no funds provided, nor personnel employed under this Contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, 5 U.S.C. Section 1501 et seq. and Chapter 15 of Title V of the U.S.C.
- 7.6. Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the County, within the State of Arizona, is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
  - 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## 8. **County's Contractual Remedies**

- 8.1. Right to Assurance. If the County in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the County's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Stop Work Order.
  - 8.2.1. The County may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the County after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
  - 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3. Non-exclusive Remedies. The rights and the remedies of the County under this Contract are not exclusive.
- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the County may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

- 8.5. Right of Offset. The County shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the County, or damages assessed by the County concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9. **Contract Termination**

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the County may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the County, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The County may, by written notice, terminate this Contract, in whole or in part, if the County determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the County for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The County, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The County may, by written notice to the Contractor, immediately terminate this Contract if the County determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the County.
- 9.4. Termination for Convenience. The County reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the County, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5. Termination for Default.
- 9.5.1. In addition to the rights reserved in the contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County on demand.
- 9.5.3. The County may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the County for any excess costs incurred by the County in procuring materials or services in substitution for those due from the Contractor.
- 9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance

with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

**10. Contract Claims**

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

**11. Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41)