

**CITY CLERK
ORIGINAL**

**C-9194
09/10/2014**

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
PERFECT PLACEMENT SERVICES, INC.**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of September 10, 2014, between the City of Glendale, an Arizona municipal corporation (the "City"), and Perfect Placement Services, Inc., an Arizona corporation ("Contractor"), collectively, the "Parties."

RECITALS

On April 1, 2013, the **State of Arizona** entered into a contract with Contractor to purchase the goods and services described in the **Temporary Staffing Services Contract, Contract No. ADSPO13-043957**, which is attached hereto as **Exhibit A**. The **State's Temporary Staffing Services Contract** permits cooperative use of its terms and conditions by other governmental agencies including the City. The **State's Temporary Staffing Services Contract** is hereinafter referred to as the Cooperative Purchasing Agreement.

- A. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- B. Section 2-149 also provides that Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

1. Term of Agreement. The City is purchasing the supplies and/or services from Contractor pursuant to Cooperative Purchasing Agreement. According to the original Cooperative Purchasing Agreement award and rate sheet, which are attached hereto as part of Exhibit B, purchases could be made by governmental entities from the date of award, which was **April 1, 2013**, until the date the

Purchasing Agreement is extended by the mutual agreement of the original contracting parties. **The initial period for this Agreement is therefore the period from the Effective Date until March 31, 2015.** The Cooperative Purchasing Agreement may not be extended the contract beyond **March 31, 2018.** Renewals are not automatic and shall only occur if the State gives the Contractor notice of its intent to renew. The City may renew this Agreement if the State renews its Cooperative Purchasing Agreement and the City notifies the Contractor of its intent to renew 30 days prior to the expiration of any existing contract term.

2. Scope of Work; Terms, Conditions, and Specifications.

- a) Contractor shall provide City the supplies and/or services identified in the Scope of Work attached hereto as **Exhibit B.**
- b) Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporate into and are an enforceable part of this Agreement.

3. Compensation.

- a) City shall pay Contractor compensation at the same rate and on the same schedule as the Cooperative Purchasing Agreement, unless the City and Contractor agree otherwise, as provided in **Exhibit B** hereto.
- b) The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed **\$47,000.00** for the entire term of this Agreement, including the initial term and any renewal terms the City wishes to exercise in accordance with Paragraph 1 above.

4. Cancellation. This Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

5. E-verify. Contractor complies with ARIZ. REV. STAT. § 23-214 and agrees to comply with the requirements of ARIZ. REV. STAT § 41-4401.

6. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
c/o Ernie Ruiz
6210 W. Myrtle Avenue, Suite #111
Glendale, Arizona 85301
(623) 930-4722

and

Perfect Placement Services, Inc.
c/o Patrick Nelson
2211 E. Highland Avenue, Suite 100
Phoenix, Arizona 85016
(602) 842-2900

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

“City”

City of Glendale, an Arizona
municipal corporation

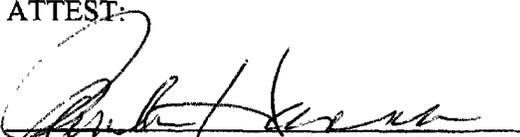
By: 
Brenda S. Fischer, City Manager

“Contractor”

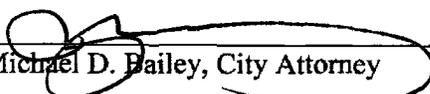
Perfect Placement Services, Inc.
an Arizona corporation

By: 
Patrick Nelson, President/CEO

ATTEST:


Pamela Hanna, City Clerk (SEAL)

Approved as to Form:


Michael D. Bailey, City Attorney

AGREEMENT WITH PERFECT PLACEMENT SERVICES, INC.

FOR

Temporary Staffing Services

EXHIBIT A

PROJECT

In accordance with the terms and conditions of this Agreement and award pursuant to State of Arizona No. ADSP013-043957, the City is retaining Perfect Placement Services, Inc., for temporary staffing services for the Landfill on an as-needed basis.



Master Blanket Purchase Order ADSP013-043957

Header Information

Purchase Order Number:	ADSP013-043957	Release Number:	0	Short Description:	Temporary Staffing Services
Status:	3PS - Sent	Purchaser:	Connie Schneider	Receipt Method:	Quantity
Fiscal Year:	2013	PO Type:	Blanket	Minor Status:	
Organization:	State of Arizona	Location:	SPO - State Procurement Office	Type Code:	Statewide
Department:	ADSP0 - State Procurement Office	Entered Date:	03/25/2013 02 56 01 PM	Control Code:	
Alternate ID:		Retainage %:	0 00%	Discount %:	0 00%
Print Dest Detail:	If Different	Release Type:	Direct Release	Pcard Enabled:	No
Catalog ID:		Tax Rate:		Actual Cost:	\$0 00
Contact Instructions:	Connie Schneider@azdoa.gov 602-542-9190				

Master Blanket/Contract End Date (Maximum): 03/31/2018 11 59 59 PM

Project No.:
Building Code:
Cost Code:
Special Purchase Types:
PIJ NUMBER:
Coop Spend To Date:

Attachments: [RFP ADSP013-00002527.zip](#), [Amendment One Executed.pdf](#), [Master Job Descriptions 7.10~8.zip](#), [Temp Staffing Master Priceshet 7.10~9.xlsx](#), [A2~23.pdf](#)

Primary Vendor Information & PO Terms

Vendor: 000028537 - Perfect Placement services, inc.
 patrick nelson
 2211 E Highland Ave Suite 100
 phoenix, AZ 85016
 US
 Email patrick@pps-az.com
 Phone (623)842-2900
 FAX (623)842-2904
 Website
[https //www.perfectplacementservices.com](https://www.perfectplacementservices.com)

Payment Terms: Net 30

Shipping Method:

Shipping Terms:

Freight Terms:

PO Acknowledgements:	Document	Notifications	Acknowledged Date/Time
	Purchase Order	Emailed to patrick@pps-az.com at 03/29/2013 01 04 57	04/03/2013 09 15 52 AM

SUPPLIERS

Categories		
a. Accounting		22nd Century Technologies, Inc
b. Administrative/Clerical		Abacus Service Corporation
c. Call Center		ACCOUNTING AND FINANCE PROFES
d. Data Entry		Accurate Placement
e. Education		Adecco Usa Inc.
f. Insurance		ALL ABOUT PEOPLE INC
g. Legal		ALLSTAFF SERVICES INC
h. Light Industrial		AZTECH PROFESSIONAL SERVICES INC
i. Marketing		CORPORATE JOB BANK PERSONNEL S
j. Medical/Healthcare		DEPENDABLE PERSONNEL INC
k. Special Expertise (CANCELED)		HOWROYD WRIGHT EMPLOYMENT A
		Insight Global, Inc
		KELLY SERVICES INC
		KFORCE INC
		ManpowerGroup US Inc.
		OneSource Employment Solutions
		Perfect Placement services, inc.
		Provincia Staffing LLC
		RANDSTAD US LP
		RW STAFFING SOLUTIONS LLC
		Staffmark



Janice K. Brewer
Governor

Brian C. McNeil
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

STATE PROCUREMENT OFFICE
100 NORTH FIFTEENTH AVENUE • SUITE 201
PHOENIX, ARIZONA 85007
(602) 542-5511 (main) (602) 542-5508 (fax)
<http://spo.az.gov>

March 25, 2013

SENT VIA EMAIL: patrick@pps-az.com

To: Perfect Placement Services, Inc.
Attn: Patrick Nelson
Subject: RFP ADSP013-00002527, Temporary Staffing Services
Notice of Solicitation Results

Dear Mr. Nelson:

The proposal received from Perfect Placement Services, Inc. was evaluated in accordance with the evaluation factors set forth in the solicitation, ADSP013-00002527 for Temporary Staffing Services. I am pleased to inform you that your Company's proposal has been selected for award.

The files for this solicitation, including the resulting contract, will soon be available for public viewing online at ProcureAZ. Also included is an Evaluation Summary Report. The resulting contract shall begin on April 1, 2013.

Please note that the high-level category of "Special Expertise" is not part of this award.

The Contract requires verification of insurance be provided prior to commencement of work being performed by the Contractor. Therefore, a certificate of insurance must be submitted within ten (10) days of receipt of this correspondence.

****The certificate of insurance must exactly match all the requirements and language provided in the Solicitation, Special Terms and Conditions.**

Contractor shall not begin any work until the Contractor receives email notification through ProcureAZ that the contract has been sent. If you have any questions in this regard, please contact me by email at connie.schneider@azdoa.gov or by phone at (602) 542-9190

Thank you for your proposal and for your continued interest in doing business with the State of Arizona. On behalf of the State of Arizona and the Department of Administration, I congratulate you on your contract award.

Sincerely,

A handwritten signature in cursive script that reads "Connie Schneider".

Connie Schneider, C.P.M.
Sr. Procurement Officer

cc: Solicitation File – ADSP013-00002527

	Scope of Work		State of Arizona State Procurement Office 100 N.15th Ave., Suite 201 Phoenix, AZ 85007
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1. Introduction

The State of Arizona, its Agencies, Boards and Commissions (State) as well as Participating Members of the State Purchasing Cooperative (Cooperative), together the "Customer", have an ongoing requirement for various products and services as described herein. The purpose of this solicitation is to conduct a competitive process, in accordance with Arizona Revised Statutes (ARS) 41-2501 et seq., to create a contract(s) from which the State and its Cooperative Members may acquire these products and services.

2. Purpose

The State of Arizona is seeking qualified temporary staff to fill a variety of temporary staff augmentation positions. The length of the assignments will vary from one (1) day to several months.

The resulting contract will be available for use by all State Agencies, Boards, Commissions, and/or eligible political divisions. After contracts have been awarded, Contractors should be aware that they are still competing against each other for temporary staffing positions with the Customer.

3. Scope of Services

Contractor shall provide a variety of temporary staff services covering sub-categories similar to those listed under the high-level categories herein.

3.1. Temporary Staff Categories

Under each **high-level** category identified below, only sample "sub-categories" have been included. Contractor may provide services that fall under one or more of the **high-level** categories. **Attachment III** contains the general or *minimum job description* qualifications for each **high-level** category.

3.1.1. **Accounting**

- Accounting Clerk
- Bookkeeper
- Accountant

3.1.2. **Administrative/Clerical**

- Receptionist
- Administrative Assistant
- Legal Assistant
- General clerical
- Clerk
- Records Management Clerk
- Tax and Remittance Processor

3.1.3. **Call Center**

- Customer Service
- Market Research
- Sales
- Help Desk Analyst
- Collections

3.1.4. **Data Entry**

- Offsite
- Onsite



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3.1.5. Education

- Elementary School Substitute
- Junior High School Substitute Teacher
- Senior High School Substitute Teacher
- Special Education Substitute Teacher

3.1.6. Insurance

- Claims Specialist
- Worker's Compensation Specialist
- Claims Adjuster

3.1.7. Legal

- Paralegal

3.1.8. Light Industrial

- Assembly
- Assembly Worker
- Precision Assembler
- Machine Tender
- Quality Control Inspector
- Auto Mechanic
- Welder
- Auto Body Painter

Food Services

- Food Service Worker
- Food Service Manager

Maintenance

- General Maintenance Worker
- Building Maintenance Worker
- Painter
- Housekeeper / Laundry
- Groundskeeper
- Janitor/Custodian

Materials Handling

- Inventory Worker
- Pick & Pack Worker
- Shipping / Receiving Worker
- Warehouse Worker
- Vehicle / Equipment Operator

3.1.9. Marketing

- Detailing
- Detailing Representative
- Sales & Promotion
- Sampler
- Demonstrator
- Comparison Shopper
- Trade Shows & Seminars
- Host / Hostess
- Booth Attendant

3.1.10. Medical / Healthcare



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- o Medical Biller
- o Medical Records Clerk
- o Medical Secretary
- o Medical Analyst

3.1.11. Special Expertise

- o Writing Expert (Grant, Policy, Technical, Processes & Procedures)
- o Procurement

3.2. Location of work

All work shall be performed on Customer property. By mutual written consent between the Contractor and the Customer, certain projects may be performed offsite. The majority of the Customers to be served pursuant to this contract are in four (4) distinct parts of the State: Maricopa County, Tucson, Flagstaff and Yuma. Other geographical State areas are allowable under this contract.

3.3. Hours of Work

Work schedules shall be established by the Customer. Most Services will be provided to the requesting agency primarily during normal business hours (8:00 A.M. to 5:00 P.M.), Monday through Friday.

3.3.1. For the purpose of this contract shifts are defined as follows:

- 1st shift – 6:00 A.M. to 6:00 P.M.
- 2nd shift – 2:00 P.M. to 12:00 A.M.
- 3rd shift – 7:00 P.M. to 6:00 A.M.

3.3.2. Overtime

Overtime shall be defined as any time in excess of forty (40) hours per week. Overtime must be approved in writing, in advance, by the Customer in order to be reimbursable. Weekend work shall not be considered overtime unless in excess of forty (40) hours. The pay rate shall not be more than time and one half for all approved overtime hours.

3.4. Supervision

Contractor's employees shall be supervised by the Customer. The Customer shall have direct control over daily activities of the Contractor's employees. Work policies, procedures, and standards established by the Customer shall be followed at all times.

4. Contractor Requirements

4.1. General Requirements

- 4.1.1. Work Start No work shall be performed until a Purchase Order has been received from the requesting Customer.
- 4.1.2. All personnel assigned must be employees of the Contractor at the time of any specific work assignment to the Customer.
- 4.1.3. Before making a referral of one of its employees, the Contractor shall assure that the employee has, at a minimum, the required qualifications for the assignment and is able to perform the duties required by the Customer.
- 4.1.4. The Contractor shall assign only those employees that have been thoroughly apprised of working conditions, job duties and hours.
- 4.1.5. The Contractor's employees shall conform in all respects with regard to physical, fire and security / safety regulations while on the Customer's premises.
- 4.1.6. Contractor shall be responsible for obtaining all rules, regulations, policies, etc. from the Customer. In the event any such employee fails to adhere to the Customer's directions or security / safety regulations, or demonstrate that they are not qualified to perform the required duties, the Customer shall notify the



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Contractor who shall replace the employee within two (2) working days at no cost to the Customer (including, but not limited to, training time, background checks, ID badges, drug testing, etc.). This also applies to any employee that leaves, for any reason, before the assignment is completed. When an employee leaves, at any time, the Contractor shall be responsible for any unreturned keys, cost of finger printing, ID badges, etc. If such items are not returned to the Customer within five (5) working days the Customer shall send an invoice to the Contractor for the exact replacement cost. The Contractor shall pay this invoice within fourteen (14) days.

4.1.7. No charges shall apply to the Customer for employees who fail to complete a minimum of sixteen (16) hours due to dissatisfaction with working conditions, job duties or hours.

4.1.8. Personnel provided by the Contractor shall follow all Customer work policies, procedures, and standards including, but not limited to:

- No smoking, eating, drinking in work area
- Signing in and presenting positive identification upon reporting for duty
- Interacting cordially with the Customer's personnel
- Responding professionally to Customer supervisory personnel
- Adhering to Customer dress code policies
- Parking in Customer assigned locations while reporting for duty
- Following other Customer rules as required
- Breaks and Lunch Schedules

4.1.9. If an employee leaves one Contractor for another Contractor, the Customer may choose to not allow that employee to continue his or her assignment.

4.2. Special Requirements

4.2.1. Invoice – Invoices shall be submitted to the applicable Agency and shall reflect at a minimum, the following:

- Contract or P.O. Number
- The Vendor ID number as defined in ProcureAZ
- Vendor Name
- Bill To
- Temporary Employee Name
- Employee Time sheet

4.2.2. Confidentiality / Non-disclosures

Depending on the hiring Agency, the Contractor's temporary staff shall be required to sign additional Confidentiality or Non-Disclosure Agreements based on assignment prior to the start of work.

4.3. Service Level Requirements

4.3.1. Non-Performance If any assigned employee does not satisfactorily perform any assigned duties, or if the Customer considers any conduct to be detrimental to the Customer's program, the Contractor shall withdraw the employee immediately upon notification. The withdrawn employee shall be replaced. Contractor shall not exceed sixteen (16) normal working hours, two (2) business days, to replace the withdrawn employee at no additional charge (including, but not limited to, training time, background checks, Identification badges, drug testing, etc.) to the Customer. This also applies to any employee that leaves, for any reason, before the assignment is completed.

4.4. Reporting Requirements

4.4.1. Time Sheets

4.4.2. Quarterly Reports (See Section 7 of the Special Terms and Conditions)



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5. Customer responsibilities

For temporary employment requirements

- Customer shall provide all equipment, materials, supplies, tools, facilities, space and supervision necessary.
- Any initial Customer requirement such as drug testing, background check, finger printing, and Identification badges shall be paid for by the Customer. In the event that the employee needs to be replaced as described in the section above, 4.1.6., these charges shall be reimbursed by the Contractor.
- Customer shall provide temporary staff new employee orientation as required.
- Customer must provide justification when requesting temporary employee changes.

6. **Supplementing Products and Services** - Products and Services available under the Contract are limited to the high-level categories included herein. If additional Products or Services are required as a supplement to the high-level category, this shall be agreed upon by each party by completing an Amendment to the Agreement. The Product or Service added shall be classified under those high-level categories that were originally awarded. Services in a high-level category that was not originally awarded shall not be supplemented.



Special Terms and Conditions

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1. Definitions

ProcureAZ terms. ProcureAZ (<https://procure.az.gov>) is the State's online eProcurement system. Although the system was configured for the State's needs, the application is based on a commercial product known as BuySpeed Online, made by Periscope Holdings, Inc. As a result, some of the terms used in the BuySpeed Online application may be semantically different to similar terms used by the State. The following terms are as they appear in BuySpeed Online (and ProcureAZ), along with their corresponding meanings as they apply to the solicitation.

"Allow Electronic Quote" means an indicator, signifying whether or not offers may be submitted in ProcureAZ.

"Alternate Id" means a data field, in which may contain additional data in order to link a solicitation to a related project, activity or program.

"Amendments" means solicitation amendments.

"Arizona Learning Center" (ALC) provides statewide Computer Based Training (CBT) courses available to all State of Arizona employees as well as agency-specific courses designed by other State agencies.

"Attachments" means the section, as displayed in ProcureAZ, where the solicitation's electronic documents may be attached.

"Available Date" means a data field, in which may contain the date that the solicitation was published.

"Bid", depending on its use may mean solicitation or offer. For example, in the terms "Bid Solicitation" and "Bid Number", the term "Bid" means solicitation. In the terms "Bid Opening Date" and "Pre Bid Conference", "Bid" means offer.

"Bid Method" means the type of solicitation process being conducted.

"Bid Number" means the solicitation's identification number.

"Bid Opening Date" means the date and time that offers are due.

"Bid Solicitation" means solicitation.

"Bid Type" means the extent the solicitation notices were issued, ranging from "OPEN" (notices went to vendors registered with the selected commodity codes) to "CLOSED" (notices were only sent to the specific vendors invited by the State).

"Bill-to Address" means the department address where invoices occurring under any resulting contract may be billed.

"Bulletin Description" means a data field, in which may contain additional information regarding the scope of the solicitation.

"Buyer" means procurement officer.

"Department" means the customer for whom the solicitation is being done.

"Description" means the solicitation's title.

"Fiscal Year" means the State Fiscal Year in which the solicitation was initiated.

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"Header Information" means the section of the solicitation, as displayed in ProcureAZ, containing solicitation information other than the line items.

"Info Contact" means a data field, in which may contain the contact information of a person to whom inquires are to be directed.

"Item information" means the section of the solicitation, as displayed in ProcureAZ, containing the solicitation's line items.

"Location" means the specific customer, within the department, for whom the solicitation is being done.

"Organization" means the state agency under whose authority the solicitation is being conducted.

"Pre Bid Conference" means pre-offer conference.

"Print Format" means the format of the solicitation's print output.

"Purchase Method" means the type of contract transaction contemplated, ranging from an "Open Market" (one-time) transaction to a "Blanket" (term) transaction.

"Purchaser" means procurement officer.

"Quote" means offer.

"Required Date" means a data field, in which may contain the date that the materials, services or construction are needed by the State.

"Ship-to Address" means the department address where materials, services or construction purchased under any resulting contract may be billed.

"Type Code" means the category of customers that may use any resulting contract(s). E.g., Single-Agency, Multi-Agency or Statewide.

1.1. Special Contract Definitions

"Personal identifying information (PII)" means an individual's name, social security number; full date of birth, drivers' license, and government issued non-operating license, financial account number, password associated with access to a financial account or account which provides benefits or right to services, contained in any record or other material related to this contract on behalf of the state. See also ARS 41-4171 or 4172 for additional personal identifiers that additionally may be defined as PII in the specification of the scope of work for the contract.

"Protected Health Information (PHI)" means individually identifiable health information as defined by the HIPAA Privacy Rule at 45 CFR 160.103 (Health Information), 45 CFR 160.103 (Individually Identifiable Health Information) and 45 CFR 164.501 (Protected Health Information) including the following identifiers (see 45 CFR 164.514(b)(2)(i): an individual's name; address; dates of birth, dates of health care services, certain age categories and other elements of dates; telephone numbers; fax numbers; e-mail addresses; social security numbers; medical records and account numbers; health plan beneficiary numbers; certificate and license numbers; vehicle identifiers, serial numbers and license plate numbers; device identifiers and serial numbers; Web Universal Resource Locators (URLs or web addresses); Internet Protocol (IP) addresses; biometric identifiers, including voice and finger prints; facial photographs and comparable images; and any other unique identifying number, characteristic or code.

"Sensitive information" means a record or an oral communication that relates to information that if disclosed could adversely affect the best interest of the State, the privacy of a person, or the critical infrastructure and

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information related to critical infrastructure of the State of Arizona and/or the United States (See ARS 41-1801).

"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

"Data Breach" means the unauthorized creation, acquisition, access, use, disclosure or disposal of personal identifying, confidential, protected health or sensitive information.

2. Amendments

Any change in the contract including the Scope of Work described herein, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representatives of the contractor and the State of Arizona. Any such amendment shall specify an effective date, any increases or decreases in the amount of the contractors' compensation if applicable and entitled as an 'Amendment', and signed by the parties identified in the preceding sentence. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification or supplementation to the contract.

3. Administrative Fee / Usage.

- 3.1. Contractor shall pay an Administrative Fee to the State in the amount of one percent (1%) of the total contract sales. The Administrative Fee is calculated based on all sales transacted under the contract, minus all taxes and any returns or credits. The Administrative Fee shall not be charged directly to the customer, e.g., as a separate line item, a fee or a surcharge, but shall be included in the contract's unit prices.
- 3.2. The Administrative Fee shall be submitted, along with a Quarterly Usage Report documenting all contract sales, to the State Procurement Office within thirty (30) days following the end of each calendar quarter. For more information on the Quarterly Usage Report or the Administrative Fee, its calculation, submission or use, see the State Procurement Office's web site at http://spo.az.gov/Contractor_Resources/Admin_Fee . All usage reports submitted for the purpose of this contract shall be public record.
- 3.3. At its option, the State may limit the applicability of the Administrative Fee to contract sales from some customers and not to others, e.g , fee is only applicable to sales from members of the State Purchasing Cooperative and not sales to State Agencies. See the State's website (above) for more information in this regard. The State will provide thirty (30) days written notice before exercising or changing this option.
- 3.4. Failure to remit Administrative fees in a timely manner or remit fees inconsistent with the contract's requirements may result in the State exercising any recourse available under the contract including a third party audit of all contract activity. Should an audit be required by the State, the Contractor shall reimburse the State for all costs associated with the audit up to \$5,000 or one (1%) percent of the contract's estimated annual value, whichever is higher.

4. Certifications

All key personnel when required shall provide evidence of their certification(s) relevant to the services provided under the contract.

5. Confidentiality of Records

The contractor shall establish and maintain procedures and controls acceptable to the State for the purpose of assuring that information or data in its possession is not mishandled, misused, released, disclosed, or used in an inappropriate manner by it, its agents, officers, or employees. This includes information contained in its records obtained from the State or others, necessary for contract performance. The contractor shall take all reasonable steps and precautions to safeguard this information and data and shall not divulge the information or data to parties other than those needed for the performance of duties under the contract.

6. Contract



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The contract between the State of Arizona and the contractor shall consist of the solicitation as amended, any requests for clarifications and/or best and final offers, the proposal submitted by the contractor, their responses to any requests for clarifications and/or their best and final offer. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the solicitation as amended shall govern. However, the State reserves the right to clarify any contractual relationship in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the solicitation as amended or the contractor's proposal. In all other matters not affected by the written clarification, if any, the solicitation shall govern.

7. Contract Usage Reports

7.1. The contractor shall be required to furnish the following reports to the State Procurement Office against this contract on a quarterly basis at no additional cost to the state:

Total contract usage reports: Identifying all eligible using agencies and total dollar volumes purchased by each eligible using agency during the reporting period. Although not required under this reporting activity, the contractor shall provide itemized usage reports detailing all acquisitions against this contract upon request.

7.2. Reports shall be due at the end of each 3-month contract period to be furnished to the contract officer of record no later than 15 days after the end of each 3-month contract period.

7.3. The information contained in these contract reports and the accurate and timely submission thereof are critical components used by the State. Failure by the contractor to submit accurate and timely contract reports against this contract may be cause for cancellation of the contract.

8. Contract Type (as Needed) - The contract shall be on an as needed, if needed basis.

9. Performance / Invoicing Remedies - Contractor and Customers shall use the following process in identifying and mitigating performance issues or problems associated with operational issues under the Contract.

9.1. Performance Issue Notice

Customers shall notify the Contractor in response to or in anticipation of any issues or problems associated with the products or services Ordered under the Contract. Contractor shall acknowledge the Customer notice, in writing or electronically, within two (2) days following receipt or a shorter period of time as requested by the Customer. Customers may accept verbal Order acknowledgment when time and circumstances require.

9.2. Performance Issue Resolution

Contractor shall provide for the resolution of all issues or problems identified by the Customer. Contractor shall provide a resolution plan to the Customer, in writing or electronically, within five (5) days or a shorter period of time as requested by the Customer.

9.3. Invoicing Issue Notice

Customers shall notify the Contractor in response to any billing errors or questionable invoice amounts. Failure by Customer to pay any portion of or the entire invoiced amount based on Contractor billing errors or charges shall not constitute default under this Contract. Customer will pay undisputed portions of the invoice in question where Customer can easily identify the undisputed portion. Payment of an amount less than the total amount due on all unpaid invoices shall be credited as directed by Customer. In no event shall Contractor apply any payment or portion thereof to any particular amount or item that is subject to any claim of error between the parties.

9.4. Invoicing Adjustments

Revised invoices or billing adjustments shall apply only to Contractor's Services that can be verified by the Customer, and requests for such adjustments must be submitted in writing to the Customer within 60 days of invoice delivery; shall reference the original invoice in which the error was made, and contain sufficient level

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of detail to make a reasonable determination of fact. Billing Adjustments, once determined to be fact, shall be documented in writing on all forms of billing, paper and electronic, in the next billing cycle.

9.5. Escalation Process

If unsatisfied with the Contractor's resolution plan for the performance issue or identified billing error, or the Contractor fails to resolve the issues or errors cited in accordance with their resolution plan, Customers may submit a fully documented Vendor Performance Report (VPR) to the Procurement Officer. Documentation to accompany the VPR shall include the Issue Notice, the Contractor's acknowledgement and resolution plan (if applicable), and a statement confirming that the resolution plan was not met or an explanation why the resolution plan was not acceptable. VPRs and accompanying documentation will serve as a foundation to any further recourse in accordance with the Remedies provisions established herein. VPRs can be found at the following URL:

http://spo.az.gov/docs/Admin_Policy/SPM/STD%20Forms%20and%20Docs/Vendor%20Performance%20Report.pdf

10. Eligible Agencies (Statewide)

This contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statutes § 41-2632.

11. Indemnification Clause:

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

12. Insurance Requirements:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.



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12.1. Minimum Scope and Limits of Insurance: Contractor shall provide coverage with limits of liability not less than those stated below.

12.1.1. Commercial General Liability – Occurrence Form

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

- General Aggregate \$2,000,000
 - Products – Completed Operations Aggregate \$1,000,000
 - Personal and Advertising Injury \$1,000,000
 - Blanket Contractual Liability – Written and Oral \$1,000,000
 - Fire Legal Liability \$ 50,000
 - Each Occurrence \$1,000,000
- a. The policy shall be endorsed to include the following additional insured language:
“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor”.
- b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

12.1.2. Business Automobile Liability

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

Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language:
“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor”.
- b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

12.1.3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000



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- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

12.1.4. Professional Liability (Errors and Omissions Liability)

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

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- b. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

12.2. Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:

12.2.1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

12.2.2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.

12.2.3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

12.3. Notice of Cancellation: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to (State of Arizona Department Representative's Name & Address) and shall be sent by certified mail, return receipt requested.

12.4. Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

12.5. Verification of Coverage: Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project.



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Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **(State of Arizona Department Representative's Name and Address)**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT DIVISION.**

- 12.6. **Subcontractors:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.
- 12.7. **Approval:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will not require a formal Contract amendment, but may be made by administrative action.
- 12.8. **Exceptions:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.
13. **IT 508 Compliance** - Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this solicitation shall comply with A.R.S. § 41-3531 and § 41-3532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.
14. **Key Personnel** - It is essential that the contractor provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The contractor must assign specific individuals to the key positions. Once assigned to work under the contract, key personnel shall not be removed or replaced without the prior written approval of the issuing agency and a copy to the procurement office of record.
15. **Licenses** - Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of a business conducted by the contractor.
16. **Non-Exclusive Contract**
This contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization(s) may be approved by the State Procurement Office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.
17. **Offshore Performance of Work Prohibited** - Any services that are described in the specifications or scope of work that directly serve the State of Arizona 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. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to or use of confidential, secure or sensitive data or personal client data including personal identifying information, protected health information, or development or modification of software for the State shall be performed within the borders of the United States.



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Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or 'overhead' services, redundant back-up services that do not include work related to confidential or sensitive information, or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

18. Protection of State Information

- 18.1. Due to the sensitive nature of the information maintained by the State, the contractor shall not disclose or release in any manner, any and all information the State deems, private, privileged or confidential transmitted during the performance of the contract. This information shall be protected by the contractor during and after the full term of the contract. At no time, shall information be disclosed without the State's prior written consent. All information and any copies thereof shall be returned to the State upon completion of the work performance. Personnel with access to personal identifying, sensitive or other confidential [see definitions section] may be subject to background checks as the expense of the Contractor or its subcontractors.
- 18.2. The Contractor shall establish and maintain current documented data safeguard procedures, evidence of information security training and controls acceptable to the State and shall furnish such upon request of the State. The Contractor and its subcontractors or other agents shall assure appropriate information management safeguards for personal identifying, confidential or sensitive information or protected health information (physical and virtual) from unauthorized creation, acquisition, access, use, disclosure or disposal. Contractor shall ensure that its' and any subcontractors' agents and/or employees perform work under this contract shall comply to the fullest extent with information the established data safeguard provisions. Failure to comply with such shall be immediately reported to the State of as a possible data breach.
- 18.3. The Contractor shall cooperate and participate in any resulting investigation of the State as well as any mitigation of a data breach if such is deemed by the State. The Contractor, its subcontractors or other agents shall maintain a complete, current and accurate log of location and person completing work for the State.
- 18.4. Upon request, the Contractor shall provide the State with an information safeguard management plan for its primary sites as well as for any locations, other than the primary site, including but not limited to personal residences and other remote locations where work under this contract shall be performed. Such a plan shall include any subcontractors and agents performing work under this contract. The Contractor shall notify the State in writing of any changes to this plan. The State reserves the right to approve and/or monitor this information safeguard plan.

18.5. Data Breach Identification and Reporting

The Contractor, its subcontractors and any agents or employees who perform under work under this contract, shall be responsible to immediately report to the State any suspected or confirmed data breach of State information. A data breach shall be defined as the unauthorized creation, acquisition, access, use, disclosure or disposal of any information deemed as personal identifying, confidential, sensitive or protected health information. The Contractor, its subcontractors, employees and all agents shall fully cooperate with the State to investigate, mitigate potential or actual harm resulting from such breach and shall remediate of such incidents, including assisting the State to notify affected individuals. The State may, at its sole discretion, assume notification responsibility owed under law by Contractor, its subcontractors or agents if the State reasonably believes the contractor or its subcontractors or agents are unable to fulfill this responsibility.

18.6. Encryption of Data



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Contractor shall protect all State electronic information in accordance with the Arizona Strategic Enterprise Technology (ASET) standards for encryption, at a minimum. (Standards are found at <http://aset.azdoa.gov/security/policies-standards-and-procedures>). File transmissions of State data using the Internet or other unsecured medium shall employ at a minimum a 128-bit end to end encryption to secure the data. All methods of encryption, training, policies, procedures, and performance measures shall be documented by Contractor and its subcontractors.

18.7. Disposal of Information

Contractor shall obtain written authorization from the State prior to disposal of any electronic media containing personal identifying, confidential, protected health or sensitive information. Prior to disposal, Contractor shall properly sanitize by clearing (using software or hardware products to overwrite media with non-sensitive data), purging (degauss or expose the media to a strong magnetic field to disrupt the recorded magnetic domains), or destroying (disintegration, pulverization, melting, incinerating, or shredding) the media. This shall be, at a minimum, done in accordance with Arizona Government Information Technology Agency standards for media sanitizing and disposal found at <http://aset.azdoa.gov/sites/default/files/media/docs/P800-S880%20Media%20San%20Disp.pdf> (S880 Media Sanitizing/Disposal Standard). Hardcopy information shall be destroyed by shredding, burning, pulping, or pulverizing the records so that personal identifying information is rendered unreadable, indecipherable, and cannot otherwise be reconstructed. Contractor shall maintain accurate and current documentation identifying the information disposed of, method of disposal, contract for disposal if applicable and retain disposal information in accordance with contract requirements.

18.8. Compliance Monitoring

In accordance with the contract terms, the State shall have the right to assess, monitor and validate compliance with all requirements relating to information safeguarding including timely reporting of actual or suspected data breach performed by the Contractor, its subcontractor(s), employees and agents.

19. Price Adjustment (After Two Years)

The State Procurement Office may review a fully documented request for a price increase only after the contract has been in effect for two (2) year(s). A price increase adjustment shall only be considered at the time of a contract extension and shall be a factor in the extension review process. The State Procurement Office shall determine whether the requested price increase or an alternate option is in the best interest of the state.

The price increase adjustment, if approved, will be effective upon the effective date of the contract extension.

20. Subcontractors

The contractor may, enter into written subcontract(s) for performance of certain functions under the contract. Contractor shall not enter into any Subcontract under this Contract, for the provision of supplies or performance of services under this Contract, without the advance written approval of the Procurement Officer. Subcontracts issued by the Contractor shall incorporate by reference the Terms, Conditions and requirements of this Contract.

21. Term of Contract

The term of the contract shall commence upon award and shall remain in effect for a period of one year, unless terminated, canceled or extended as otherwise provided herein. By written mutual contract amendment, any resultant contract may be extended for four (4) additional one-year periods or a portion thereof. The original contract shall remain the same and apply during the renewal period with the exception of price.

22. Travel

When requested, in writing, from the State to perform work that requires overnight accommodations, the Using Agency will reimburse the contractor in accordance with the current rates and provisions specified in the Rules and Regulations applicable to State employee's travel. The contractor shall itemize and invoice all per diem and lodging charges. The State's travel policy maybe located at <http://www.gao.az.gov/publications/SAAM/SAAM-2d-022008.pdf>

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UNIFORM TERMS AND CONDITIONS – VERSION 8

1. **Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms 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 of 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 State.
- 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 State 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 *“State”* means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13 *“State 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, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 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.



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2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State 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 Parol 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 State 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 State and, where applicable, the Federal Government, 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 State 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 the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State 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



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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 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Ownership of Intellectual Property
Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of the contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9 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 State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers or any employee thereof to ensure compliance. Should the State determine that the contractor and or any subcontractors be found noncompliant, the State 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.
- 3.10 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 A.R.S. 23-214, Subsection A.
- 3.11 Scrutinized Businesses In accordance with A.R.S. 35-391 and A.R.S. 35-393, Contractor certifies that the Contractor does not have scrutinized business operations in Sudan or Iran.
- 3.12 Offshore Performance of Work Prohibited Any services that are described in the specifications or scope of work that directly serve the State of Arizona 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 State within thirty (30) days

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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 State of Arizona 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 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 State 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 IRS W9 Form on file with the State of Arizona, 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 State for any payment may arise under this Contract beyond the current state 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 State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State 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
- 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 State shall not unreasonably withhold approval.



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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 State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, 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 State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State 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



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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 State 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 State 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 State 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 State.

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 licenses and permit requirements.

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 State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

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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 State's Contractual Remedies

8.1 Right to Assurance. If the State 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 State'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 State 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 State 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 State 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 State 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 State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State 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 State 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 State 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 State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the



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Contractor to any officer or employee of the State 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 State, 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 State may, by written notice to the Contractor, immediately terminate this Contract if the State 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 State.
- 9.4 **Termination for Convenience.** The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State 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 State. 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 State 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 State 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 State on demand.
- 9.5.3 The State 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 State for any excess costs incurred by the State 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).
- 12 **Comments Welcome.** The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona 85007.

EXHIBIT B
AGREEMENT WITH PERFECT PLACEMENT SERVICES, INC.
FOR
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COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Method of payment is provided in Paragraph 5 of the Agreement. The amount of compensation for temporary staffing services for hourly wages is provided in State of Arizona Contract No. ADSPO13-043957.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed **\$47,000.00**.

DETAILED PROJECT COMPENSATION

Purchase of temporary staffing services for the Landfill on an as-needed basis.