

ATTACHMENT C

CONTRACT

This contract is entered into by and between the State of Arizona, Office of the Auditor General, hereinafter referred to as the Auditor General or Office, and _____, hereinafter referred to as the Contractor.

WITNESSETH: In consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this contract according to the provisions set out herein:

A. Contractor agrees to perform the following services:

1. Conduct a performance audit of the Regional Transportation Authority Plan of Pima County (the "RTA Plan"). The request for proposals and the Contractor's proposal are incorporated herein by reference as though fully set forth herein. Notwithstanding, in the event of a conflict between the provisions of this contract (excluding the Contractor's proposal), the Request for Proposals, and the Contractor's Proposal, the conflict will be resolved consistent with this Contract (excluding the Contractor's proposal) and the Request for Proposals.
2. Report periodically to the Auditor General on the overall progress of the project, according to the time frame stipulated in the request for proposal. The Auditor General reserves the right to meet with the Contractor as necessary at reasonable intervals to review the work and progress of the project. The Contractor may not delegate any obligations or performance under this Contract without the prior written consent of the Auditor General.

B. The Auditor General agrees to compensate the Contractor as follows:

1. The Auditor General accepts the cost proposal and will pay Contractor an amount not to exceed \$_____. Contractor may be compensated as work is completed in a proportion based on the number of hours completed to the total hours of the project. \$_____ is the total compensation for all services required of the Contractor under this contract, including all related expenses such as travel charges, per diem costs and all applicable taxes.
2. Contractor will submit a statement or invoice for services performed based on the number of hours completed to the total hours of the project. Subject to the availability of funds, the Office will process and remit to Contractor within 10 days of the date of receipt of Contractor's statement or invoice a warrant for payment of services.

3. The Office will withhold, pending final completion of the project, 5 percent of all payments otherwise due with respect to the services to be provided pursuant to this contract. The payment of the amount withheld, except \$_____, will be due 20 days after publication of the audit report. The remaining \$_____ withheld will be paid upon completion of the initial follow up.
4. Payments made by the Auditor General to the Contractor pursuant to this Contract are conditioned upon the availability to the Auditor General of funds authorized for expenditure in the manner and for the purposes herein. Notwithstanding any other provision of this Contract, in the event that the Auditor General is unable to obtain sufficient funds for the purchase of these services, the Contract shall be terminated upon written notice to the Contractor that funds are not available to the Auditor General.

C. Effective Date of Contract and Publication of Report:

This Contract is effective on the date signed by the Auditor General. This Contract shall remain in effect until publication of the audit and follow-up reports by the Auditor General.

D. Personnel:

1. The Contractor represents that it has secured all personnel required for the performance of the services under this Contract. Such personnel shall not be employees of the subject of the audit or its governing body or bodies and the Contractor has disclosed that they have no contractual relationship with these entities or the government employers that participate in them.
2. All the services required hereunder shall be performed by the Contractor, and all personnel engaged in the work shall be fully qualified and shall be authorized under the state and local law to perform such services. It is further agreed that the Contractor warrants that it is fully qualified and authorized under the state and local law to perform the services contemplated by this Contract.
3. The Contractor shall make key staff available to testify at a hearing conducted by the Arizona Legislature regarding the audit. In the event that the Contractor needs to travel to Arizona more than once to testify at a legislative hearing, the parties hereto shall separately negotiate and contract for compensation for such appearance and testimony.

E. Insurance

Contractor and subcontractors shall procure and maintain the following insurance until all of their obligations have been discharged including any warranty periods under this Contract for claims of injury to persons or damage to property that may arise from or in

connection with the performance of the work hereunder by the Contractor, its 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 or its agents, representatives, employees, or subcontractors, and the Contractor is free to purchase additional insurance.

1. Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

a. 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

- i. The policy shall be endorsed to include the following additional insured language: *“The State of Arizona and the Auditor General and employees of the Office of the Auditor General shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.”*
- ii. The policy shall contain a waiver of subrogation against the State of Arizona and the Auditor General and employees of the Office of the Auditor General for losses arising from work performed by or on behalf of the Contractor.

b. 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
- i. The policy shall be endorsed to include the following additional insured language: *“The State of Arizona and the Auditor General and employees*

of the Office of the Auditor General 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."

- ii. Policy shall contain a waiver of subrogation against the State of Arizona and the Auditor General and employees of the Office of the Auditor General for losses arising from work performed by or on behalf of the Contractor.

c. Worker's Compensation and Employers' Liability

- Each Accident \$500,000
- Disease—Each Employee \$500,000
- Disease—Policy Limit \$1,000,000

- i. Policy shall contain a waiver of subrogation against the State of Arizona and the Auditor General and employees of the Office of the Auditor General for losses arising from work performed by or on behalf of the Contractor.

- ii. 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.

d. Professional Liability (Errors and Omissions Liability)

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

- i. 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.

- ii. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

e. Additional Insurance Requirements:

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

- i. The State of Arizona and the Auditor General and employees of the Office of the Auditor General 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.

- ii. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
- iii. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

2. Notice of Cancellation

With the exception of (10)-day notice of cancellation for nonpayment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days' written notice to the Office of the Auditor General. Such notice shall be sent directly to Julie Cantrell, 2910 N. 44th Street, Suite 410, Phoenix, AZ 85018 and shall be sent by certified mail, return receipt requested.

3. Acceptability of Insurers

Insurance is to be placed with duly licensed or approved nonadmitted 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.

4. Verification of Coverage

Contractor shall furnish the Auditor General 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 Auditor General before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to Julie Cantrell, 2910 N. 44th Street, Suite 410, Phoenix, AZ 85018. The 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.

5. Subcontractors

Contractor's 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 coverages for subcontractors shall be subject to the minimum requirements identified above.

6. Approval

Any modification or variation from the *insurance requirements* in this Contract shall be made by the Auditor General, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

F. Indemnification

Contractor shall indemnify, defend, save, and hold harmless the State of Arizona and the Office of the Auditor General (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 and its officers, officials, agents, and employees for losses arising from the work performed by the Contractor under this contract.

G. Additional Contract terms:

1. The Contractor warrants that no part of the contract amount provided herein shall be paid directly or indirectly to any officer or employee of the State of Arizona as wages, compensation, or gifts in connection with any work contemplated or performed relative to this contract.
2. It is expressly understood and agreed that this instrument contains the entire agreement between the parties and that, except as otherwise stated herein, there are no collateral conditions, agreements or representations, all such having been incorporated and resolved into this agreement. Except as specified herein, no document or communication passing between the parties hereto shall be deemed a part of this agreement.
3. This contract may be modified at any time only by written amendment executed by all parties hereto. No agent, employee, or other representative of either the

Contractor or the Auditor General is empowered to alter any of the terms of this Contract unless it is done in writing and signed by the authorized representative of the respective party.

4. The Contractor shall not assign this contract or any part of it or enter into subcontracts for or delegate any of the work described herein without obtaining the prior written approval of the Auditor General.
5. Time is of the essence in this contract. In case Contractor fails to perform the agreement at the time fixed for performance by the terms of this contract, the Auditor General may, at the Auditor General's election, terminate the contract. Such termination shall be in addition to, and not in lieu of, any other legal remedies provided by this contract or by law.
6. It is understood and agreed that this contract shall be governed by the laws of the State of Arizona both as to interpretation and performance.
7. The parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this agreement. The arbitrator shall be selected by the parties and the arbitrator's decision shall be final and not appealable to any court. Any arbitration shall occur in Phoenix, Arizona.
8. Notwithstanding any provision of this contract, this contract may be terminated by the Auditor General without penalty or further obligation pursuant to A.R.S. §38-511. Any termination shall be in writing.
9. Contractor agrees to maintain the confidentiality of the working papers during and after this project and to observe the confidentiality requirements of the Auditor General pursuant to A.R.S. §41-1279.05 and any other applicable confidentiality requirements. Such policies prohibit the Contractor from releasing any findings. All reports and working papers are the property of the Auditor General and are subject to the laws and policies governing the Auditor General's reports and working papers.
10. This Contract shall not relieve any party or subcontractor of any obligation or responsibility imposed upon it by law.
11. The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which shall remain in effect without the invalid provision or application.
12. The Contractor will act in its individual capacity and not as an agent, employee, partner, joint venturer or associate of the Auditor General. An employee, subcontractor, or agent of the Contractor shall not be deemed or construed to be the employee or agent of the Auditor General for any purpose.

13. Documentation supporting the Contractor's audit report shall be retained for at least 5 years from the date of the final report and should be available, free of charge, for examination by authorized representatives of the Auditor General or her authorized designee. Documentation includes notes, memoranda, analyses, and conclusions; and schedules, graphs, charts, other illustrative work product; and all supporting documentation that assist in completion of the report. If the Contractor does not desire to retain the documentation for such period, the Contractor shall give the documentation to the Auditor General for safekeeping.
14. Nothing in this Contract shall be interpreted to modify, impair, destroy or otherwise effect any common law or statutory right to indemnify or contribution that any party to this Contract may have against any other party relative to any incident arising out of the performance of this Contract.
15. This contract and all work hereunder shall be subject to the laws, rules, regulations, and decrees of the State of Arizona.
16. If the Contractor is unable to complete this contract through no fault of the Contractor, or if the Legislature does not provide the necessary funds, the contract shall be terminated with no liability to either party except that the AUDITOR GENERAL shall pay the Contractor for hours completed on the audit based on the rates, which include travel and out-of-pocket expenses, as submitted by the Contractor in its proposal.
17. The Request for Proposals and the Contractor's Proposal are incorporated in this contract.

IN WITNESS WHEREOF, the parties have executed this contract, consisting of eight pages to be effective as of the date signed by the Auditor General.

OFFICE OF THE AUDITOR GENERAL

CONTRACTOR

 Debra K. Davenport
 Auditor General State of Arizona

 EIN or Social Security Number

 Date

 Date