

**RIO NUEVO  
SAMPLE 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 and financial analysis of the Rio Nuevo Multipurpose Facilities District (District) that includes the evaluations and required information described in items 2 through 7.
2. Address the following issues related to compliance:
  - a. Evaluate the District's compliance with significant statutory provisions including ARS §48-4204(B) which prescribes allowable expenditures of District revenues.
  - b. Evaluate the intergovernmental agreement between the District and the City of Tucson (City) and ensure that the agreement is consistent with State statutes and that both parties have complied with the significant provisions of the agreement.
3. Address the following issues related to the District's policies and procedures:
  - a. Evaluate the policies and procedures that have been in place for prioritizing and managing construction projects and financing activities.
  - b. Evaluate the District board of directors' role in prioritizing and managing construction projects and financing activities.
  - c. Make recommendations that will help the District manage its resources more effectively and efficiently.
4. Evaluate the District's solvency, including its ability to pay operating costs, meet its debt obligations and complete projects that are currently under construction.

5. Address the following issues related to capital and operating costs:
  - a. Evaluate whether the District's construction projects have been successful in supporting and achieving the District's purposes, including an analysis of infrastructure projects.
  - b. Evaluate the District's plans for using unexpended bond proceeds and determine whether these plans provide for the most effective use of the remaining proceeds.
  - c. Evaluate whether the 2015-2016 District expenditures, as reported below in 6(e), were successful in supporting and achieving the District's purposes.
  
6. Provide schedules that show:
  - a) The District's capital costs as of June 30, 2016, including debt service, of the Tucson Convention Center and other assets of the District.
  - b) The level of the district's indebtedness, the amount of principal, interest and other debt service expenses paid in fiscal year 2015-2016 and the remaining term to maturity with respect to each.
  - c) The District projects that are currently under construction and that are included in the District's plans for capital improvements and investments. This schedule should include costs-to-date and estimated costs-to-complete as of June 30, 2016.
  - d) A description of and the amount of municipal payments, pursuant to A.R.S. §42-5031(D) during the fiscal year 2015-2016, the cumulative amount of those payments through the end of fiscal year 2015-2016, and the municipal payments that will be required by the City of Tucson in the future, if any, based on the District's costs as of June 30, 2016. These municipal payments represent the matching required by the City of Tucson.
  - e) Fiscal year 2015-2016 District expenditures that include the level of expenses for administration, planning, travel and entertainment.
  
7. The Tucson Convention Center is the District's multipurpose facility which was purchased from the City of Tucson. The City of Tucson leases the facility from the District and is responsible for operating the facility. The District is currently making or plans to make improvements to the facility. Address the following issues related to the Tucson Convention Center:

- a. Evaluate the financing and lease of the Tucson Convention Center. Also evaluate construction and operation and maintenance of each component of the Tucson Convention Center, including whether the facility exceeds, meets, or fails to meet nationally recognized standards.
- b. Provide schedules that show:
  - i) Fiscal year 2015-2016 District revenues derived from each component of Tucson Convention Center and other District revenues by source.
  - ii) The public use of each component of the Tucson Convention Center and any other multi-purpose facilities of the District.
  - iii) Fiscal year 2015-2016 operation and maintenance costs of the Tucson Convention Center and other assets of the District.
8. Review the recommendations in the 2013 performance audit of the District and describe whether the District has implemented each recommendation and, if not implemented, the progress toward implementing each recommendation.
9. The Contractor must have no conflict of interest with regards to any other work performed for the State of Arizona, the Rio Nuevo Multipurpose Facilities District, or the City of Tucson. The Auditor General is the sole determiner of any conflicts of interest.
10. The Contractor will provide periodic briefings to the Office of the Auditor General during the course of the project and will require written progress reports for the purposes of monitoring the status, progress, and direction of the Contractor's work. Representatives from the Rio Nuevo Multipurpose Facilities District will be invited to attend these periodic briefings, as needed.
11. Documentation supporting the Contractor's audit report shall be retained for at least five 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 their 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.
12. Prior to completion of the Contractor's final report, the Contractor shall be available to participate in one exit conference, approximately three hours in length, with responsible officials of the Rio Nuevo Multipurpose Facilities

District and the City of Tucson. The purpose of the exit conference is to discuss the draft report and identify any errors included in the report. Auditor General Staff shall participate in the exit conference. The Contractor may also need to testify at a hearing conducted by the Arizona State Legislature.

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

1. The Auditor General accepts the Contractor's proposal and will pay Contractor an amount not to exceed \$ \_\_\_\_\_ for the performance audit and financial analysis and other required services, which includes an amount not to exceed \$ \_\_\_\_\_ for travel, lodging and overhead related costs. In addition to the contract amount above, the Auditor General will compensate the Contractor the hourly cost not to exceed \$ \_\_\_\_\_ per hour plus travel, lodging, and overhead related costs to testify at a legislative hearing, if necessary. Contractor agrees to limit travel, lodging and related costs to those prescribed by the State of Arizona for its employees. The AUDITOR GENERAL shall pay the Contractor in 5 installments based on periodic written progress reports and invoices for the work accomplished to date. The AUDITOR GENERAL will withhold the final installment, 20 percent of the total contract amount, until all written reports are accepted in final form by the AUDITOR GENERAL. Should a dispute regarding payment arise both parties agree that Contractor may cease work, without penalty, until such dispute is resolved.
2. 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. Contractor shall be compensated for work performed and any expenses incurred up to the time of receipt of the written notice.

**C. Effective Date of Contract and Completion of Report:**

1. This Contract is effective upon the signing by the Auditor General. This Contract shall remain in effect until the final report is complete and accepted by the Auditor General.
2. The Contractor shall submit the initial draft report no later than August 5, 2016, in order for the Auditor General to have an opportunity to review and comment on the draft. The draft report shall describe the Contractor's methodology and evidence used to develop and support the findings,

conclusions, and recommendations and addressing the issues identified in the Request for Proposals.

The Contractor shall submit a revised draft report to the Auditor General on or before August 31, 2016. The revised draft report should incorporate any comments, suggestions, or recommendations made by the Office of the Auditor General that resulted from review of the firm's initial draft report.

The final report shall be due on or before September 30, 2016. The Contractor shall deliver one unbound and 20 bound copies of the final report to the Auditor General. The final report shall be responsive to any comments, suggestions, or recommendations to the revised draft made by the Office of the Auditor General. This final report shall incorporate a transmittal letter from the Office of the Auditor General. In addition, the Contractor shall provide an electronic copy of the final report, including any graphics and appendices (on disk or by e-mail). The electronic version of the report shall be in PDF format and must not be password protected. Further, the Contractor will provide links and bookmarks set up for each page of the table of contents within the PDF files.

**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 City of Tucson or the Rio Nuevo Multipurpose Facilities District and the Contractor has disclosed that they have no contractual relationship with the City or the District at this time or during the time of the performance audit and financial analysis.
2. All the services required hereunder shall be performed by the Contractor or under its supervision, 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.

**E. 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 including Contractor's proposal, 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 with regards to Contractor's proposal, 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; provided, however, that Contractor shall not be liable for any delays caused by the District or City or any of their personnel. 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 binding arbitration under the American Arbitration Association, as authorized by A.R.S. §12-1518, after exhausting applicable administrative reviews and voluntary mediation, 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. The arbitrator shall have no

power to award non-monetary damages, equitable relief, punitive damages, consequential damages, or any other damages not measured by the prevailing party's actual monetary damages as of the date the request for arbitration is made. Each party will bear its own costs in the arbitration, with the fees and expenses of the arbitrator shared equally.

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, any similar requirements of the City of Tucson, and any other applicable confidentiality requirements. Such policies prohibit the Contractor from releasing any findings. All reports are the property of the Auditor General and are subject to the laws and policies governing the Auditor General's reports.
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. The Auditor General will assist to the best of its ability to obtain the cooperation of the District and the City in the event that the District and City are uncooperative, in order to complete the audit by the required deadline and to review draft reports provided by the Contractor on a timely basis, in order for the Contractor to complete the necessary work. The Auditor General will also provide staff to attend the entrance and exit conferences and other meetings at the discretion of the Auditor General.
14. The District and the City will provide all necessary information in order for the Contractor to complete work within the scope of this contract. This includes working papers supporting assumptions and financial information; financial

statements and notes; detailed and summary general ledger information; summaries and conclusions reached by financial advisors, legal counsel and consultants; meeting minutes and schedules requested in Articles A. 6 and A. 7 of this contract.

15. In the event of a conflict between the provisions of this contract, the Request for Proposal, and the Contractor's Proposal, the Contract and the Request for Proposal shall prevail over the Contractor's Proposal.
16. LIMITATION OF LIABILITY. EXCEPT WHERE IT HAS BEEN DETERMINED IN A JUDICIAL PROCEEDING THAT CONTRACTOR ACTED WITH GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, CONTRACTOR'S LIABILITY HEREUNDER FOR DAMAGES, REGARDLESS OF THE LEGAL THEORY OF THE CLAIM (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), SHALL NOT EXCEED THE AMOUNT OF THIS CONTRACT AND THIS SHALL BE AUDITOR GENERAL'S EXCLUSIVE REMEDY FOR ANY DAMAGES. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY TO THE FULL EXTENT ALLOWED BY LAW. THIS LIMITATION OF LIABILITY SHALL ALSO APPLY AFTER TERMINATION OF THIS AGREEMENT.
17. NO PUNITIVE OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, LOST SAVINGS OR LOST BUSINESS OPPORTUNITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY REGARDLESS OF THE GROUNDS FOR OR NATURE OF ANY CLAIM ASSERTED (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), AND EVEN IF EITHER PARTY HAD REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL ALSO APPLY AFTER TERMINATION OF THIS AGREEMENT.
18. Each party to this Agreement acknowledges that each will have contact with employees, consultants, independent contractors, or employees of independent contractors (herein collectively, "Employee") of the other in connection with ongoing performance pursuant to this Agreement, that such party's Employees will be rendering valuable services, the interruption or termination of which may cause serious disruption and damage to such party. Therefore, each party agrees that it will not solicit or hire, either directly or indirectly, whether as employee, agent, or independent contractor, any Employee of the other party who performed any service under this Agreement in any capacity whatsoever. The provision of this article shall

remain in effect for the term of this Agreement and for a period of one year after the termination of this agreement.

19. In no event shall any action against Consultant arising from or relating to the services provided by Consultant or this Agreement generally be brought after the earlier of 1) two (2) years after the date on which occurred the act or omission alleged to have been the cause of the injury alleged; or 2) the expiration of the applicable statute of limitations or repose.
20. Prior to commencement of the work described herein, the firm shall furnish certificates showing insurance in force as follows:
  - Public Liability and Property Damage insurance in an amount not less than one million dollars (\$1,000,000).
  - Professional Liability insurance in an amount not less than one million dollars (\$1,000,000).
  - Valuable Papers insurance in an amount sufficient to assure the restoration of any working papers, documents, memoranda, reports, or other similar data relating to the work or reports of the firm used in the completion of this contract.

Excepting the Professional Liability coverage, insurance certificates shall name the State of Arizona AUDITOR GENERAL as an additional insured.

The proposal shall be signed by a representative or officer authorized to bind the firm. Individuals authorized to negotiate a contract for and on behalf of the firm should be identified by name, title, address, and telephone number.

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

**OFFICE OF THE AUDITOR GENERAL**

**CONTRACTOR**

\_\_\_\_\_  
Debra K. Davenport  
State of Arizona Auditor General

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
EIN or Social Security Number

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date