

SERVICES CONTRACT TERMS AND CONDITIONS
LAKE HAVASU CITY, ARIZONA
SERVICES CONTRACT
CONTRACT NO. 18-2835

This Contract is between **Lake Havasu City, 2330 McCulloch Blvd. N., Lake Havasu City, AZ 86403** (City) and **CDS Global, Inc. 1901 Bell Avenue, Des Moines, IA 50315** (Contractor).

The parties agree as follows:

Effective Date and Termination Date. The effective date of this Contract shall be January 1, 2018 or the date, on which each party has signed this Contract, whichever is later. Unless earlier terminated as provided below, the termination date shall be December 31, 2021.

Statement of Work. Contractor shall perform the work described in EXHIBIT 1.

Payment for Work. City agrees to pay Contractor in accordance with EXHIBIT 1.

Contract Documents. This Contract includes the following Exhibits listed below and attached herein and incorporated herein by this reference:

- ☒ EXHIBIT 1 - STATEMENT OF WORK
- ☒ EXHIBIT 2 - INSURANCE REQUIREMENTS
- ☒ EXHIBIT 3 - CERTIFICATE OF LIABILITY INSURANCE
- ☒ EXHIBIT 4 - EMPLOYMENT ELIGIBILITY VERIFICATION & FORM (Not Applicable)
- ☒ EXHIBIT 5 - CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR
- ☒ EXHIBIT 6 - WORKERS' COMPENSATION EXEMPTION CERTIFICATE
- ☒ EXHIBIT 7 - PROPOSERS SUBMITTED FEES/PRICING

STANDARD TERMS AND CONDITIONS

1. **Time is of the Essence.** Time is of the essence in the performance of this Contract. Contractor is providing services which involve health, safety and welfare of the general public. Delivery time is of the essence. Delivery must be made in accordance with the delivery schedule as promised by the Contractor.
2. **Contract Amendments.** This Contract shall be modified only by a written Contract Amendment signed by the City Manager or designee or City Official and persons duly authorized to enter into Contracts on behalf of the City Council.
3. **Parole Evidence.** This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.
4. **Subcontracts and Assignment.** Contractor shall not Subcontract any of the work required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of City.
5. **No Third Party Beneficiaries.** City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
6. **Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
7. **Merger Clause.** This Contract and the attached exhibits constitute the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract. No waiver, consent, modification, or change in the terms of this Contract shall bind either party unless in writing and signed by both parties. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.
8. **Compliance with Applicable Law.** Contractor shall observe and comply with all established federal, state, and local administrative rules, codes, ordinances, regulations, standards, and laws applicable to the work under this Contract regardless of whether or not they are referred to by the City.
9. **Governing Law.** The provisions of this Contract shall be construed in accordance with the laws of the State of Arizona and the provisions of the Lake Havasu City Municipal Code.

- 10. Arbitration.** In accordance with A.R.S. Title 12, parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this agreement where the sole relief sought is monetary damages of \$40,000, or less, exclusive of interest and costs.
- 11. Early Termination.** This Contract may be terminated as follows:
- City and Contractor, by mutual written agreement, may terminate this Contract at any time.
 - City, in its sole discretion, may terminate this Contract for any reason on thirty (30) days written notice to Contractor.
 - Either the City or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
 - Notwithstanding paragraph 11(c), City may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit, or certificate that Contractor must hold to provide services under this Contract.
- 12. Payment on Early Termination.** Upon termination pursuant to paragraph 11, payment shall be made as follows:
- If terminated under 11(a) or 11(b) for the convenience of the City, the City shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. City shall not be liable for direct, indirect, or consequential damages. Termination shall not result in a waiver of any other claim City may have against Contractor.
 - If terminated under 11(c) by the Contractor due to a breach by the City, then the City shall pay the Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract.
 - If terminated under 11(c) or 11(d) by the City due to a breach by the Contractor, then the City shall pay the Contractor for work performed prior to the termination date provided such work was performed in accordance with the Contract less any setoff to which the City is entitled.
- 13. Remedies.** In the event of breach of this Contract, the parties shall have the following remedies:
- If terminated under 11(c) by the City due to a breach by the Contractor, the City may complete the work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the City the amount of the reasonable excess.
 - In addition to the remedies in paragraphs 11 and 13 for a breach by the Contractor, the City also shall be entitled to any other equitable and legal remedies that are available.
 - If the City breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.
- 14. Waiver.** Waiver of any default under this Contract by City shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.
- 15. Conflict of Interest / Contract Cancellation.** Contractor stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers, and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract.
- Pursuant to A.R.S. §38-511, this Contract is subject to cancellation by the City if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of Lake Havasu City is, at any time while the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract.
- 16. No Kick Back Fee.** Contractor stipulates that no person has been employed or has been retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and that no member of the City Council or any employee of City has any interest, financially or otherwise, in this Contract that has not been publically declared and procured in accordance with A.R.S. § 38-501 *et seq.*
- In case of breach or violation of this requirement, the City shall have the right to annul this Contract without liability or at its discretion to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 17. Gratuities.** The City may, by written notice to the Contractor, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City. In the event this Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

18. **Non Exclusive Contract.** Any subsequent Contract resulting from the solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods, service, or finished end product from another source when necessary.
19. **Licenses and Permits.** Contractor shall maintain in current status all federal, state, and local laws, licenses, and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.
20. **Force Majeure.**
- a. 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.
 - b. Force Majeure shall not include the following occurrences:
 - 1) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
 - 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
 - 3) Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
 - c. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
 - d. 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.
21. **Late Submission of Claim.** The City shall not honor any invoices or claims which are tendered one (1) year after the last item of the account accrued.
22. **Access to Records.** Contractor shall maintain fiscal records and all other records pertinent to this Contract. All fiscal records shall be maintained pursuant to generally accepted accounting standards, and other records shall be maintained to the extent necessary to clearly reflect actions taken. All such records shall be retained and kept accessible for no less than **six (6) years** following final payment. City's authorized representatives shall have the right to direct access to all of Contractor's books, documents, papers and records related to this Contract for the purpose of conducting audits and examinations and making copies, excerpts and transcripts. City shall reimburse Contractor for Contractor's cost of preparing copies.
23. **Insurance and Performance / Payment Bond Requirements.** Contractor shall maintain throughout the term of the Contract the amounts and limits established and referenced in the solicitation documents and included herein.
24. **Indemnity.** Each party agrees to indemnify, defend and hold the other party, its directors, officers, representatives, agents and employees harmless from and against any third party claim, action or liability (including damages, costs, expenses and reasonable attorneys' fees) ("Claim"), that may arise against the indemnified party for (a) injuries or property damage caused by the indemnifying party; (b) the indemnifying party's failure to comply with all laws and regulations applicable to the provision of Services under this Agreement; (c) the indemnifying party's infringement or misappropriation of a third party's intellectual property (including, without limitation, patents, trademarks, copyrights or trade secrets); (d) any unauthorized disclosure of the other party's Confidential Information, and (e) the breach by any indemnifying party of any representation, warranty, or covenant contained in this Agreement. City further agrees to indemnify Contractor from and against any Claim that may arise from (i) the actions or omissions of Contractor taken in compliance with the City's instructions regarding Contractor's performance of the services, (ii) Contractor's processing and depositing of checks and other negotiable instruments containing restrictive endorsements, and (iii) forgery, insufficient funds or other similar actions. The indemnifying party shall have the right to exercise reasonable control over any litigation within the scope of this indemnity; provided, however, that the indemnified party shall have the right to participate in any such litigation insofar as it concerns claims against it. That right to participate includes the indemnified party's right to select and retain counsel to represent it at the indemnified party's own expense. Neither party shall have any obligation to defend or indemnify the other party pursuant to this Section 24 if the indemnifying party is not notified promptly of the Claim and is materially prejudiced thereby. The indemnified party shall cooperate to the extent necessary in the defense of any Claim within the scope of these indemnities.

25. **No Advance Payments.** Advance payments are not authorized. Payment will be made for only actual services or commodities that have been received and accepted by the City.
26. **Advertisement.** Contractor shall not advertise or publish news releases concerning this Contract without the prior written consent of the City Manager or designee.
27. **Americans with Disabilities Act.** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act, Public Law 101-336, 42 U.S.C. 12101-12213, and applicable federal regulations under the Act.
28. **Anti-Discrimination Clause.** Contractor shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or political affiliation in programs, activities, services, benefits, or employment. Contractor shall not discriminate against minority-owned, women-owned, or disadvantaged small businesses. Contractor shall include a provision in each sub-contract requiring subcontractors to comply with the requirements of this clause.
29. **OMB Circular A-133.** If Contractor is determined by the City to be a sub-recipient of federal funds passed through the City, the Contractor must submit an annual Federal Compliance Audit in conformity with the OMB Circular A-133, which applies the Federal Single Audit Act of 1984, Public Law 98-502, to non-profit organizations.
30. **Disadvantaged / Minority / Woman Business Enterprise.** Contractor agrees to give Disadvantaged / Minority / Woman Businesses the maximum practical opportunity to participate in this Contract when possible, by obtaining supplies, materials, and services from such firms.
31. **Non Appropriation Clause - Fiscal Year.** If appropriations are reallocated, reduced or eliminated by legislative action or for any reason these goods and / or services are not funded, during any fiscal year the City may take any of the following actions:
- a. Accept a decrease in price offered by the Contractor and complete the Contract;
 - b. Place the Contract on-hold and pay the Contractor for work performed up to the date of the non-appropriation notice. Work must be performed in accordance with the Contract prior to payment and be less any setoff to which the City is entitled. The contract may be resumed at a later date when funding is reestablished. Contract cannot be resumed beyond a (4) four year time period from the date of non-appropriation notice. Contractor must also reaffirm pricing and resubmit insurance and bonding certificates, if applicable. Documents must be received by the City prior to resuming the Contract;
 - c. Cancel the Contract and pay the Contractor for work performed up to the date of the non-appropriation notice. Work must be performed in accordance with the Contract prior to payment and be less any setoff to which the City is entitled, and re-solicit a new procurement;
 - d. Cancel the contract and re-solicit the requirements;
 - e. Cancel the contract.
32. **Non Appropriation Clause - Future Fiscal Year.** Funds may not presently be available for performance under this Contract beyond the current City's fiscal year. If payment for performance under this Contract extends into next fiscal year, the City's obligation to pay for such performance is subject to approval of future appropriations to fund this Contract by legislative action. The City shall have no legal liability to pay funds due for performance under the terms of the Contract until and unless funds are appropriated by legislative action.
33. **Notice to Proceed.** The Contractor agrees to render services promptly and diligently upon receipt of written notice by a duly authorized City agent and to proceed with any or all of the services set forth herein.
34. **Right to Assurance.** Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within **seven (7) days**, the demanding party may treat this failure as an anticipatory repudiation of this Contract.
35. **Non Performance.** In the event of nonperformance under this Contract, the City, after **seven (7) days** written notice to the Contractor, shall have the right to obtain from other sources such products and / or services as may be required to accomplish the work not performed, and it is agreed that the difference in cost, if any, for said work or goods shall be borne by the Contractor.
- For purposes of this section, nonperformance shall be defined as failure to appear and perform work and / or deliver goods as specified and scheduled.
36. **Liens.** Contractor shall hold the City harmless from claimants supplying labor or materials to the Contractor or its subcontractors in the performance of the work required under this Contract. Contractor shall provide written certification that all liens against materials and labor have been satisfied, before the City will make final payment.
37. **Severability.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.
38. **Title and Risk of Loss.** The title and risk of loss of materials or service shall not pass to the City until the City actually receives the material or service at the point of delivery FOB; and such loss, injury, or destruction shall not release

seller from any obligation hereunder. The City shall notify the Seller promptly of any damaged goods, service, or finished end product, and further shall assist the Seller in arranging for inspection.

39. **FOB Point of Delivery.** All pricing, labor, materials, and services are to be FOB destination and delivered within the city limits of Lake Havasu City, Arizona, unless otherwise specified elsewhere in the solicitation documents.
40. **Employment Standards.** The Contractor agrees that upon request by Lake Havasu City, it shall remove from the City's premises any Contractor's employee, who, in the reasonable opinion of Lake Havasu City, is guilty of improper conduct, bringing any unauthorized personnel (including their own children) into a facility or work area, or is not qualified to perform the work assigned. The Contractor shall understand that its employees shall complete and pass a security background check, if so requested.
41. **Organization–Employment Disclaimer.** The agreement resulting hereunder is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the right and obligations of the parties shall be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor shall have total responsibility for all salaries, wage bonuses, retirement, withholdings, workers' compensation, occupational disease compensation, unemployment compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such persons and shall save and hold the City harmless with respect thereto.
42. **Quarterly Reports.** If requested, parties agree that Contractor shall provide quarterly reports to City which shows each item purchased from City in the prior quarter, the individual cost of each item, and the total cost of all items purchased in the quarter.
43. **General Product Requirements.** All items delivered shall conform to the Specifications and shall be in first class condition. Acceptance by the City shall be subject to inspection and approval. In case of conflict between the Specifications and Additional Contract Terms and these Standard Terms and Conditions, the Specifications and Additional Contract Terms shall prevail. The apparent silence of the Standard Terms and Conditions and Specifications and Additional Contract Terms as to any detail or the apparent omission of a detailed description concerning any point shall be regarded as meaning that only best commercial practice is to prevail and that only items manufactured with material and workmanship of first quality are to be supplied. All items delivered shall be of identical style, quality, and appointments as those offered to the trade in general during the course of the model year. All items delivered shall be new current models, free and clear of all liens and encumbrances. Unless otherwise provided in the Specifications, items shall, where appropriate, be prepared for delivery to and use by the City by a factory franchised agent. Each item delivered shall be accompanied by all pre-delivery inspection sheets, coupons, certificates, descriptive literature, warranty cards, and information provided by the manufacturer and furnished to the trade in general. All such documents shall be properly completed and signed in accordance with industry standards. All items required by the Specifications to be UL listed shall indicate the current UL listing on the item. All items that are required by the Specifications to have any other certification shall indicate that certification on the item or in the accompanying documentation.
44. **Inspection and Acceptance.** Goods, service, or finished end product furnished under this Contract shall be subject to inspection and testing by the City at times and places determined by the City within a reasonable time after arrival at its ultimate destination. If the City finds goods, service, or finished end product to be incomplete, unsatisfactory, defective, or of inferior quality or workmanship, or fails to meet the specifications or other requirements or not in compliance with the Contract, the City, at its sole discretion, may either reject the goods, service, or finished end product, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods, service, or finished end product to the City at a reduced price, whichever the City deems equitable under the circumstances. Lake Havasu City may return such goods, service, or finished end product to Contractor at Contractor's expense. Contractor shall reimburse Lake Havasu City for any amounts paid by the City for the returned goods, service, or finished end product and any costs incurred by the City to return the goods to the Contractor. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the City, the City may reject the goods, service, or finished end product and cancel the Contract in whole or in part. Payment for merchandise, service, or finished end product prior to inspection shall not be construed to be an acceptance of unsatisfactory or defective merchandise, service, or finished end product. Nothing in this paragraph shall in any way affect or limit the City's rights as buyer under the Uniform Commercial Code, including the rights and remedies relating to rejection or revocation of acceptance under A.R.S. § 47-2711 et seq.
45. **Warranty and Service.** Contractor warrants all goods, service, or finished end product delivered to be free from defects in labor, material and manufacture and to be in compliance with the specifications set out in this Contract. All implied and express warranty provisions of the UCC are hereby incorporated by reference. Further, Contractor represents and warrants that Contractor has the power and authority to enter into and perform this Contract and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms. All items delivered shall carry either the standard manufacturer's warranty or service policy providing that warranty work will be performed by any authorized manufacturer's dealer, or if specified in the Specifications, the warranty and service policy called for in the Specifications. In addition, unless otherwise noted in the Specifications, the warranty and service policy indicated above shall include the following terms and conditions:
 - a. There shall be no distance or time limitations, not applicable to the trade in general, on either standard or extended warranty or labor. All franchised or authorized dealers of the item in the state shall honor warranty.

Warranty maintenance requirements, when performed by City, shall be acceptable to dealer when said work performance meets or exceeds the dealer certification requirements. City shall provide evidence of such work performance upon request, as required by the manufacturer. Any extended warranty period customarily granted shall be made available to City at no additional cost, and

- b. City shall be advised of all product recalls on all or any part of the item at no additional cost. All product recall information, replacement parts and labor, shall be provided to the City as soon as available to dealer.

- 46. **Shipment Reservation Prohibited.** Contractor shall not ship the goods, service, or finished end product under reservation and no tender of a bill of lading will operate or function as a tender of the goods or finished end product.
- 47. **No Replacement of Defective Tender.** Contractor tender of goods, service, or finished end product must fully comply with all provisions of this Contract as to time of delivery, quantity, assortment, quality, and the like. If a tender is made which does not fully conform, this shall constitute a breach, and the Contractor shall not have the right to substitute a conforming tender.
- 48. **Product Correction.** It is agreed that Contractor shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance.
- 49. **Default in One Installment to Constitute Breach.** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of nonconforming goods, service, or finished end product or a default of any nature under one installment or lot will impair the value of the whole agreement and constitute a breach of the agreement as a whole.
- 50. **Hazardous Materials.** Contractor warrants that goods, service, or finished end product provided under this Contract comply with all federal, state, and local safety and health requirements. All items that include hazardous materials shall be labeled in accordance with law with the names of the hazardous ingredients, the hazards of the materials, and the appropriate precautions. Contractor shall provide a Material Safety Data Sheet as defined by OSHA for any goods, service, or finished end product provided under this Contract which may release, or otherwise result in exposure to, a hazardous substance under normal conditions of use. In addition, Contractor shall label, tag, or mark such goods, service, or finished end product. Those materials for which toxicological or hazard data are unavailable shall carry a label stating: "Toxicological and other hazards unknown. Handle as extremely hazardous."
- 51. **Security.** Any disclosure or removal of any City material and / or information marked as confidential or private on the part of Contractor shall be cause for immediate cancellation of the Contract.
- 52. **Preference for Recycled Materials.** The City shall prefer materials or supplies manufactured from recycled materials if the recycled product is available, it meets the requirements set forth in the Specifications, and the cost of the product does not exceed the cost of non-recycled products by more than five percent (5%).
- 53. **Prohibition on Government Contracts.** The Contractor shall comply with all applicable provisions of the A.R.S. § 35 Public Finances. Contractor further agrees that they shall not have any scrutinized business operations in Sudan and / or Iran.
- 54. **Terrorism Country Divestments.** In accordance with A.R.S. § 35 Public Finances, the City is prohibited from purchasing from a company that is in violation of the Export Administration Act. By entering into the Contract, Contractor warrants compliance with the Export Administration Act.
- 55. **Contractor's Employee E-Verify Eligibility Requirement.** The Contractor shall comply with all applicable provisions of the Federal Immigration and Nationality Act (FINA), A.R.S. § 41-4401 and A.R.S. § 23-214, which requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program. See the following website for further information: www.dhs.gov/e-verify.

Pursuant to A.R.S. § 41-4401, the City may request verification of compliance from any contractor or subcontractor performing work under this Contract. The City reserves the right to confirm compliance. Should the City suspect or find that the Contractor or any of its subcontractors are not in compliance, the City may pursue any and all remedies allowed by law, including, but not limited to suspension of work, termination of the Contract for breach or default, and suspension and / or debarment of the Contractor. All costs necessary for compliance shall be solely borne by the Contractor.

- 56. **Israel.** Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.
- 57. **Limitation of Liability.** Except for each party meeting its indemnification obligations under section 26 or for either party's unauthorized disclosure of the other party's confidential information, (a) Contractor's liability for any breach under this Agreement shall be either, at the City's option (i) a re-performance of the services in question without charge; or (ii) limited to the actual and proven direct damages of City resulting from the breach, not to exceed, in the aggregate, six months' charges under the contract (b) neither Contractor nor City shall be liable for any indirect, incidental, special or consequential damages of any character, including, without limitation, lost income, lost revenue lost profits, and damages for loss of goodwill, whether based in contract, tort or any other theory, regardless of the form in which any legal action or equitable action may be brought, including, without limitation, any action in tort or contract. Each party shall have a duty to mitigate damages for which the other party is responsible.

CONTRACTOR DATA AND SIGNATURE

Contractor Address: 1901 Bell Avenue, Des Moines, IA 50315

Federal Tax ID# or Social Security #: 13-3127783

Business Designation (check one): ☐ Sole Proprietorship ☐ Partnership
☐ Corporation-for profit ☐ Corporation-non-profit
☐ Other describe here:

Federal tax ID numbers or Social Security numbers are required pursuant to A.R.S. § 42-1105 and will be used for the administration of state, federal and local laws. Payment information will be reported to the Internal Revenue Service under the name and Federal tax ID number or, if none, the Social Security number provided above.

I have read this Contract including the attached Exhibits. I understand the Contract and agree to be bound by its terms.

Signature

Title

Name (please print)

Date

NOTE: Contractor must also sign EXHIBIT 4, EXHIBIT 5, and EXHIBIT 6, if applicable.

LAKE HAVASU CITY SIGNATURE

(This Contract is not binding on the City until signed by the City Manager or designee)

City Manager or Designee**

Date

DEPARTMENT AND CITY ATTORNEY APPROVAL AND REVIEW

Reviewed by:

CITY ATTORNEY
FOR LAKE HAVASU CITY, ARIZONA

City Attorney

Date

EXHIBIT 1
LAKE HAVASU CITY SERVICES CONTRACT
CONTRACT NO.: 18-2835
STATEMENT OF WORK

1. Contractor shall perform the following work:

Contractor to provide Municipal Billing Lockbox Services to collect and process customer payments for utility services, false alarms, rents and other miscellaneous fees due to the City as further described in the Request for Proposal, RFP No.: P18-2835 Lockbox Services excluding only the Web Image Archive (WIA) services described on page 5 of Proposer's Submitted Response to the City's Proposal. Proposer's Submitted Response for a time period up to three (3) years.

2. The maximum payment under this Contract, including expenses, is:

"Not to Exceed" \$40,000 per fiscal year. Fees and pricing are set forth in Exhibit 7, as provided in the Proposer's Submitted Response to the City's Proposal.

3. City shall pay Contractor on the following basis:

City shall make payment to contractor within thirty (30) days from the time of invoice, provided the contractor submits an invoice that meets the City's accounting level standards.

4. Contractor will bill City for the work as follows:**

Contractor shall provide an invoice for work completed during the latest monthly billing period. Items shall be billed according to the Request for Proposal, RFP No.: P18-2835 for Lockbox Services including Addendum No.1, and pricing pursuant to Exhibit 7, Proposers Submitted Response, excluding only the Web Image Archive (WIA) services described on page 5 of Proposer's Submitted Response to the City's Proposal. Invoice process will continue until termination date and combined invoice amounts do not exceed the maximum payment pursuant to Item 2 listed above.

5. City will pay expenses on the following terms and conditions:

Expenses shall be paid with **prior** approval from City according to the Request for Proposal, RFP No.: P18-2835 for Lockbox Services including Addendum No.1, and pricing pursuant to Exhibit 8, Proposers Submitted Response.

6. This Contract may be renewed on the following basis:

Renewal may be for a maximum of two (2) additional twelve (12) month periods.

****City shall have the right to withhold from payments due Contractor such sums as are necessary in City's sole opinion to protect City from any loss, damage, or claim which may result from Contractor's failure to perform in accordance with the terms of the Contract or failure to make proper payment to suppliers or subcontractors.**

EXHIBIT 2
LAKE HAVASU CITY SERVICES CONTRACT
CONTRACT NO.: 18-2835
INSURANCE REQUIREMENTS

Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below:**

Workers Compensation insurance in compliance with A.R.S. Title 23, Chapter 6, together with Employer's Liability insurance with coverage limits of not less than \$1,000,000 must be included, unless exempt. (See Exhibit 6)

THIS COVERAGE IS REQUIRED. Attach Certificate of Insurance. If Contractor does not have coverage and claims to be exempt, attach Exhibit 5 in lieu of Certificate.

Professional Liability insurance with a combined single limit of not less than ☐ \$1,000,000, ☐ \$2,000,000 each claim, incident, or occurrence, with an annual aggregate limit of ☐ \$1,000,000, ☐ \$2,000,000. This is to cover damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage for claims made within two years after this Contract is completed.

☐ Required by City ☒ Not required by City

Commercial General Liability insurance, on an occurrence basis, with a combined single limit of not less than ☒ \$1,000,000, ☐ \$2,000,000 each occurrence for Bodily Injury and Property Damage, with an annual aggregate limit of ☒ \$1,000,000, ☐ \$2,000,000. This insurance must include contractual liability coverage.

☒ Required by City ☐ Not required by City

Commercial Automobile Liability insurance with a combined single limit, or the equivalent of not less than ☒ \$1,000,000, ☐ \$2,000,000 each occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles.

☐ Required by City ☒ Not required by City, if use of the vehicle is not required as part of the service provided the City.

Contractor's Pollution Liability insurance on an occurrence basis, with a combined single limit of not less than ☐ \$1,000,000 each occurrence with an annual aggregate limit. Coverage to include sudden and accidental pollution events, clean up costs, and liability for third-party bodily injury and property damage arising from pollution conditions caused by the Contractor's performance under Contract.

☐ Required by City ☒ Not required by City

Contractor's Product Liability. Insurance on an occurrence basis, with a combined single limit of not less than ☒ \$1,000,000 each occurrence with an annual aggregate limit. Certificates of Insurance for product liability coverage are required from Contractors or product manufacturers of higher hazard equipment where potential for loss is greater than normal (i.e., chemicals, heavy road equipment, machinery, etc.). This procedure verifies that the manufacturing company has proper product liability insurance and economic backing in the event of a catastrophic loss relating to a failure, malfunction, defect or other condition relating to the manufacture of the specific product.

☐ Required by City ☒ Not required by City

Coverage must be provided by an insurance company admitted to do business in Arizona and rated A-VII or better by AM Best's Insurance Rating. Contractor's coverage will be primary in the event of loss. Contractor shall pay all deductibles and retentions. A cross-liability clause or separation of insured's condition will be included in all commercial general liability policies required by this Contract.

Contractor shall furnish a Certificate of Insurance to the City with the signed Contract. The Certificate shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without **ten (10) working days** written notice from the Contractor's insurer to the City. The Certificate shall also state the deductible or retention level.

If Contractor ships all goods, service or finished end product to be supplied under this Contract by common carrier and will not make deliveries to the City using its own employees, and/or transportation proof of insurance as set forth in Section F of the solicitation documents will not be required.

The amount and type of insurance coverage as required herein is not intended to, and shall not be interpreted to, limit the scope of the indemnity set forth in this section.

Additional Insureds. For commercial general liability and automobile liability insurance policies, the Insurance Certificate shall also provide that **"Lake Havasu City, its agents, directors, officers, officials, and employees are additional Insureds with respect to Contractor's services to be provided under this Contract."**

Completed by: /s/Christi Marnati
Contract Originator

****Note to Contract Originator:** For certain types of contracts additional insurance may be required. Contact Risk Management Manager.

ACORD™	EXHIBIT 3 - <u>CERTIFICATE OF LIABILITY INSURANCE</u>	Date(MM / DD / YYYY)
<u>PRODUCER</u>	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A:	
<u>INSURED</u>	INSURER B:	
	INSURER C:	
	INSURER D:	

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(MM / DD / YY)	POLICY EXPIRATION DATE(MM / DD / YY)	LIMITS	
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURRENCE DAMEG TO RENTED PREMISES (Each occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS – COMP / OP AGG	\$ \$ \$ \$ \$ \$
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	\$ \$ \$ \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY:	\$ EA ACC AGG \$
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE AGGREGATE	\$ \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER / MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below:				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE –EA EMPLOYEE E.L. DISEASE –POLICY LIMIT	\$ \$ \$
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

ADDITIONAL INSURED: Lake Havasu City, its agents, directors, officers, officials, and employees are additional Insureds with respect to Contractor's services to be provided under this Contract.

CERTIFICATE HOLDER

CANCELLATION

LAKE HAVASU CITY
 COMMUNITY INVESTMENT DEPARTMENT
 2330 MCCULLOCH BLVD. N.
 LAKE HAVASU CITY, AZ 86403

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

EXHIBIT 4
LAKE HAVASU CITY SERVICES CONTRACT
EMPLOYMENT ELIGIBILITY VERIFICATION & FORM

INSTRUCTIONS FOR COMPLETION OF EMPLOYMENT ELIGIBILITY VERIFICATION FORM

WHO MUST COMPLETE THIS FORM:

In accordance with Lake Havasu City Code Chapter 3.30, Employment of Unauthorized Aliens, all contractors and subcontractors furnishing labor, time, or effort for construction or maintenance of any structure, building, transportation facility, or improvements of real property must complete this form.

Contractors or subcontractors, as described above, must certify that they have complied, in good faith, with the applicable requirements of the Federal Immigration Control and Reform Act with respect to the hiring of covered employees. This certification must be executed by an authorized representative.

WHEN THIS FORM MUST BE COMPLETED:

This form must be completed by all contractors and subcontractors and submitted to the City department awarding the contract, license agreement, or lease no later than notification of successful direct selection, bid, request for proposals, request for qualification, or any similar competitive or noncompetitive procurement or bidding process.

This form can be found at:

https://www.lhcaz.gov/docs/default-source/departments/documents/employerverificationofemploymenteligibility.pdf?sfvrsn=4408297c_9

EXHIBIT 5
LAKE HAVASU CITY SERVICES CONTRACT
CONTRACT NO. 18-2835
CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR

NOTE: Contractor Must Complete A or B below:

A. CONTRACTOR IS A CORPORATION, LIMITED LIABILITY COMPANY OR A PARTNERSHIP.

I certify under penalty of perjury that Contractor is a [check one]:

☐ Corporation ☐ Limited Liability Company ☐ Partnership ☐ Non-Profit
Corporation authorized to do business in the State of Arizona

Signature

Title

Date

B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN INDEPENDENT CONTRACTOR.

Contractor certifies under penalty of perjury that the following statements are true:

1. If Contractor is providing labor or services under this Contract for which registration is required under A.R.S. Title 23, Chapter 6, Contractor has registered as required by law, **and**
2. If Contractor performed labor or services as an independent Contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return), **and**
3. Contractor represents to the public that the labor or services Contractor provides are provided by an independently established business, **and**
4. All of the statements checked below are true.

NOTE: Check all that apply. You must check at least four (4) to establish that you are an Independent Contractor.

- ☐ A. The labor or services I perform is primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence which is set aside as the location of the business.
- ☐ B. I purchase commercial advertising or I have business cards for my business, or I am a member of a trade association.
- ☐ C. My business telephone listing is separate from my personal residence telephone listing.
- ☐ D. I perform labor or services only under written contracts.
- ☐ E. Each year I perform labor or services for at least two different persons or entities.
- ☐ F. I assume financial responsibility for defective workmanship or for service not provided by purchasing performance bonds, errors and omission insurance or liability insurance, or providing warranties relating to the labor or services I provide.

Contractor Signature

Date

EXHIBIT 6
LAKE HAVASU CITY SERVICES CONTRACT
CONTRACT NO. 18-2835
WORKERS' COMPENSATION EXEMPTION CERTIFICATE

(To be used only when Contractor claims to be exempt from Workers' Compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance under A.R.S. Title 23, Chapter 6, §23-902 for the following reason *(check the appropriate box)*:

____ **SOLE PROPRIETOR**

- Contractor is a sole proprietor, and
- Contractor has no employees, and
- Contractor will not hire employees to perform this Contract, or
- Contractor will hire independent contractors to perform work under this Contract.

____ **CORPORATION - FOR PROFIT**

- Contractor's business is incorporated, and
- All employees of the corporation are officers and directors and have a substantial ownership interest* in the corporation, and
- All work will be performed by the officers and directors; Contractor will not hire other employees to perform this Contract, or
- Contractor will hire independent contractors to perform work under this Contract.

____ **CORPORATION - NONPROFIT**

- Contractor's business is incorporated as a nonprofit corporation, and
- Contractor has no employees; all work is performed by volunteers, and
- Contractor will not hire employees to perform this Contract, or
- Contractor will hire independent contractors to perform work under this Contract.

____ **PARTNERSHIP**

- Contractor is a partnership, and
- Contractor has no employees, and
- All work will be performed by the partners; Contractor will not hire employees to perform this Contract, and
- Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto, or
- Contractor will hire independent contractors to perform work under this Contract.

____ **LIMITED LIABILITY COMPANY**

- Contractor is a limited liability company, and
- Contractor has no employees, and
- All work will be performed by the members; Contractor will not hire employees to perform this Contract, and
- If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto, or
- Contractor will hire independent contractors to perform work under this Contract.

*NOTE: Contractor that hires independent contractor's to perform work under this Contract shall comply with A.R.S. §23-902 and provide a written form to the City showing compliance with said A.R.S. Statue requirement.

A shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation, or if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

Contractor Printed Name

Contractor Signature

Contractor Title

Date

EXHIBIT 7
LAKE HAVASU CITY SERVICES CONTRACT
CONTRACT NO. 18-2835
LOCKBOX SERVICES FEES/PRICING

Description	Unit Price	Estimated Monthly Volume	Estimated Monthly Cost	Explanation
CHECK ONLY/CHECK LIST KEY ACCOUNT SURCHARGE	\$0.078	837	\$65.29	Checks Only
MAINTENANCE	\$200.00	1	\$200.00	Maintenance
WEB IMAGE ARCHIVE*	\$0.0134	17,997	\$241.16	Web Portal image viewing
PAYMENT PROCESSED	\$0.1425	9,531	\$1,358.17	Processable Items
MULTIPLE PAYMENT SURCHARGE	\$0.0410	1,610	\$66.01	Payment Processing
CLERICAL	\$29.00	0	\$ -	Per hour cost for special projects-must be approved by LHC
PROGRAMMING	\$125.00	0	\$ -	Per hour cost for programming-must be approved by LHC
POSTAGE	\$13.4400	1	\$13.44	Postage (will vary depending on the month)

**Not included in contract Statement of Work.*